

Appeal No. 23-3016

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	)	CA NO. 23-3016
	)	DC Nos. 22-CR-00023-DKW
	)	(District of Hawaii)
Plaintiff and Appellee,)	
	)	<u>EXCERPTS OF RECORD</u>
v.)	
)	
LYLE RIKIO CUMMINGS,)	
)	
Defendant and Appellant.)	
)	

EXCERPTS OF RECORD OF APPELLANT

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ORIGINAL

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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

MAR 24 2022
12 50 8 am
at o'clock and min. M
CLERK, U.S. District Court

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UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,) CR. NO. CR 22-00023 DKW
)
)
Plaintiff,) INDICTMENT
)
)
vs.) [18 U.S.C. § 2422(b); 21 U.S.C. §§
) 841(a)(1) and 841(b)(1)(C)]
LYLE RIKIO CUMMINGS,)
)
)
Defendant.)
)
)
)

INDICTMENT

The Grand Jury charges:

Count 1
Coercion and Enticement
(18 U.S.C. § 2422(b))

On or about and between March 13, 2020 and March 15, 2020, both dates being approximate and inclusive, within the District of Hawaii and elsewhere, LYLE RIKIO CUMMINGS, the defendant, did use any facility and means of interstate and foreign commerce, namely, the Internet and a cellular phone, to knowingly persuade, induce, entice, and coerce an individual who had not attained the age of 18 years to engage in sexual activity under such circumstances as would constitute a criminal offense under Hawaii state law, specifically Hawaii Revised Statutes, Section 707-730(1)(b), and attempted to do so.

All in violation of Title 18, United States Code, Section 2422(b).

Count 2
Possession with Intent to Distribute Cocaine and Cocaine Base
(21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C))

On or about March 15, 2020, within the District of Hawaii, LYLE RIKIO CUMMINGS, the defendant, did knowingly and intentionally possess with intent to distribute controlled substances, namely a mixture or substance containing cocaine, and a mixture or substance containing cocaine base, also known as “crack,” both Schedule II controlled substances, to another individual.

All in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

FORFEITURE NOTICE

1. The allegations set forth in Count 1 of this Indictment are hereby re-alleged and incorporated by reference as though set forth in full herein for the purpose of noticing forfeiture pursuant to Title 18, United States Code, Section 2428.

2. The United States hereby gives notice that, upon conviction of the offense charged in Count 1 of this Indictment, the government will seek forfeiture, in accordance with Title 18, United States Code, Section 2428(a), of (1) the defendant's interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of such violation; and (2) any property, real or personal, constituting or derived from any proceeds that the defendant obtained, directly or indirectly, as a result of such violation. This includes, but is not limited to, \$645.00 and a black iphone 7 model A1660.

3. If any of the property described in paragraph 2 above, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be

divided without difficulty; the United States of America shall be entitled to forfeiture of substitute property up to the value of the property described above in paragraph 2, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

DATED: March 24, 2022, at Honolulu, Hawaii.

A TRUE BILL

/s/ Foreperson

FOREPERSON, GRAND JURY

Connie Torf
for CLARE E. CONNORS
United States Attorney
District of Hawaii

Christine Olson
CHRISTINE OLSON
REBECCA PERLMUTTER
Assistant U.S. Attorneys

United States v. Lyle Rikio Cummings
Indictment CR 22-00023 DKW
Cr. No.

11:58AM 1 government does not intend to call any further witnesses or
11:58AM 2 present any other evidence.

11:58AM 3 Does the defense have a motion that it wishes to make?

11:58AM 4 MR. MOTTL: Yes, Your Honor.

11:58AM 5 THE COURT: Please approach.

11:58AM 6 MR. MOTTL: Yes.

11:58AM 7 (Sidebar on the record:)

11:58AM 8 THE COURT: Go ahead, Mr. Mottl.

11:58AM 9 MR. MOTTL: Defense moves for a motion for judgment of
11:58AM 10 acquittal where either those dates, recollection of the facts,
11:59AM 11 as well as the applicable law. Nothing further.

11:59AM 12 THE COURT: You don't wish to argue further?

11:59AM 13 MR. MOTTL: No.

11:59AM 14 THE COURT: All right. That motion is denied. There
11:59AM 15 is more than sufficient evidence particularly when viewed in
11:59AM 16 the light most favorable to the prosecution to establish all of
11:59AM 17 the elements of Counts 1 and 2 beyond a reasonable doubt
11:59AM 18 together with the fact that -- together with the absence of any
11:59AM 19 entrapment issue. I believe there's also evidence in the
11:59AM 20 record beyond a reasonable doubt that would lead the jury to
11:59AM 21 conclude that the defendant in this case was not entrapped in
11:59AM 22 the manner as suggested by the defense in pretrial submissions
11:59AM 23 as well as in argument during the course of trial.

11:59AM 24 Mr. Mottl, do you intend to offer evidence now?

11:59AM 25 MR. MOTTL: Yes.

Joseph R. Mottl, Esq. #3118

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Phone: (808) 371-7595

**Attorney for Defendant
Lyle Rikio Cummings**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

United States of America,

Plaintiff,

vs.

Lyle Rikio Cummings,

Defendant.

Case: 1:21-MJ-00751-DKW

**Motion to Suppress Evidence;
Declaration of Counsel; Memorandum
of Points and Authorities; Exhibits**

**Trial Date: June 5, 2023
Judge: The Hon. Derrick K. Watson**

Motion to Suppress Evidence

Defendant Lyle Rikio Cummings, through counsel, pursuant to Amendments 5 and 6, *Constitution of the United States of America*, Article 1, Sections 7 and 14, *Constitution of the State of Hawaii*, and Rule 47, *Federal Rules of Criminal Procedure*, moves to suppress evidence seized federal and state law enforcement officers on grounds that the evidence illegally seized because it was taken in a search which intentionally exceeded the parameters of a search warrant.

The attached Declaration of Counsel, Exhibits, case file, related supplemental filings, and matters presented at hearing, support this motion.

Dated at Honolulu, Hawaii, March 24, 2023.

/s/ Joseph R. Mottl

Joseph R. Mottl, Esq.
Attorney for Defendant
Lyle Rikio Cummings

Declaration of Counsel

I, Joseph R. Mottl, Attorney at Law, hereby declare:

1. I represent defendant **Kyle Rikio Cummings** herein.
2. I have interviewed the defendant and studied the discovery thus far disclosed to the defense.
3. Upon information and belief, the statements of fact in the attached memorandum are correct to the best of my knowledge and belief.

I declare under penalty of law that the foregoing is true and correct to the best of my knowledge and belief.

Memorandum of Points and Authorities

This Motion to Suppress Evidence seeks to suppress evidence taken in an illegal search which intentionally exceeded the scope of a search warrant and the fruits of that search and seizure.

Pursuant to the declaration in support of this motion my client has consistently attested to counsel that the phone was in its case that contained his visible driver's license and credit cards. The recovery of this phone that was target #1 listed in affidavit supporting the application for the search warrant.

Target #2 is listed as “articles of identification or items containing names...of CUMMINGS...which would serve AS EVIDENCE OF OWNERSHIP, OCCUPANCY, POSSESSION, OR CONTROL OF THE ABOVE TARGETED VEHICLE”.

The Defendant raises the first defense that the request for the warrant was unnecessarily broad and exceeded the scope necessary to produce any evidence relevant to the probable cause presented for Defendant's arrest.

Consistently throughout the limited discovery the defense has been provided there was no question by any of the government actors that the suspect had been positively identified, was under surveillance consistently until arrest, and that the vehicle was registered to the Defendant.

The Government has never articulated how the vehicle was in any way an element of the offense. We note that this was a sting operation being jointly run by a task force comprised of the Federal agents training the Maui Police officers and that about 8 other defendants were arrested during this operation and none of those vehicles were impounded, searched, or alleged to be elements of the offense. Further, the Government has been very slow in turning over any documentation (beyond its “Initial” disclosure of a single CD disk) regarding the initial arrest where we believe there was a body camera in operation on the senior supervisor of that proceeding and is referenced twice in this limited discovery but there is no copy of this video clearly identified in any of the evidentiary logs, we have just recently been able to access. There are no copies of

any video or photos from the actual arrest proceedings. The only visual record the defense has been provided is some individual stills of the supposed search of the vehicle pursuant to the search warrant. Those photographs have been numbered and presented in a manner that seems to indicate a certain order or procedure was followed however there is a complete absence of any written narrative by any participant in the relevant search, and there are gross incongruities in the alleged succession of actions if the photos are reflecting a chronological narrative as follows.

Clearly the photos seem to establish that search of the truck was conducted by serving the warrant onto the windshield at Cummings_000101.pdf (hereinafter the pictures shall be referenced only by the last three numerals in the computer file title for ease of reference) opening the left door in 102, then the right in 103, then a close up of the phone in 104, and then the actual phone being moved onto the passenger seat in 105.

Now at this point certainly there is no argument that target #1 has been recovered by the officers. The defense would argue that the search should have terminated on recovery of the phone. A hearing is necessary to determine what is the admissible evidence so that the defense can make reasonable determinations about defense strategies and consider possible plea negotiations. But for the purposes of further argument, and because of the very limited discovery that the Defense has been provided regarding these proceedings, the Defense argues that Target #2 was specifically limited to obtaining

documentation that would identify the defendant and connect him to the truck for whatever reason the Government wants to now present – its worth noting that the joint task force did not participate in this search, only Detective Gregg K. Katayama as it appears from the Return and Affidavit filed on March 23, 2020 (which aside from the allegedly chronological photo array is the only documentation provided through discovery to the defense of these events.)

The defendant argues that Maui Police Officers are trained procedurally to look for “articles of identification or items containing names which would serve as evidence of ownership, occupancy, possession, or control of a targeted vehicle” first, attached to the passenger sun block, second, in the glove box in front of the passenger, which is where in #140 he found the registration for the truck in defendant’s name as evidenced in #141 and 142. Further, #139 shows that the other searches have not been conducted yet because everything on the console including the console armrest storage is still untouched, unless of course the photo array is NOT chronologically accurate.

In the array as presented by the Government it appears that after recovery of target #1, the Detective thought he would find identifying documents establishing the ownership of the vehicle in the back seat of the truck in #106 and 107. Then inside the pill container with the Hawaiian flag on it in the cupholder in #108, 109 where clearly Target #1 has always been recovered.

However, whatever arguments about the discovery of the cannabis being evidence of a crime giving new probable cause to extend the search are tempered by the fact that in #111, 112 and 113 the Detective, a state actor, immediately found a valid State of Hawaii Medical Cannabis card #2019032769, and being a state actor would have to recognize that this would be legal possession of cannabis. Further, the Defense argues that this document clearly established the identity of the defendant and satisfied the requirement of the warrant "to find...identification cards...mail...or other personal items addressed to CUMMINGS" therefore the scope of the warrant had been satisfied and there was no further constitutionally valid reason for the Detective's search to proceed.

So Target #2 has been recovered in satisfaction of the scope of the warrant by both the actual knowledge in possession of the government prior to the search, AND satisfied AGAIN when the glove box is searched, AND satisfied AGAIN when the Cannabis card is recovered. There is simply NO REASON for any further search. Except for a retaliatory fishing expedition because the Defendant refused to grant permission for the recovery of the target phone at the scene of the arrest and forced the Task Force officers to go through the procedures of getting the search warrant. The Defendant should not face a retaliatory hunting expedition because he exercised his right to refuse to consent to a search without a warrant and without the opportunity to consult with counsel, especially when he KNEW there were potentially incriminating materials in that vehicle. Hawaii law specifically prohibits forcing a defendant

from having to choose between exercising their constitutional right to be free from search and seizure, right not to incriminate themselves, and their right to counsel, so that Police Officers will not retaliate or exceed their mandates to uphold the law and punish citizens for exercising those rights even if it causes the officers extra work or effort to comport with these protections, and certainly the Hawaii Supreme court has clearly stood against citizens being coerced into waiving those rights to avoid such abuses of power.

The next shot perfectly presents Defendant's defense: shot #114 shows Target #1 already recovered, the towel removed, the legs of an unidentified witness who is not mentioned anywhere in the discovery provided so far, and a completely closed completely neutral console armrest. Then #115 reveals a non-descript bag – nothing is in free view. And the officer begins to it appears chronologically search the bag in #116-125, however, then at #126 we see the bag closed again and out on the seat. Its important to note, that there are instances where the bag (and in other parts of this search) is in the armrest, on the seat, and then not present. This happens with some of the other items, as if the photos have been organized and numbered to present a certain assumptive narrative.

Next we now see that the presumably first place to look for "identification" section of the bag is now opened at #129 where another (or the same) driver's license is recovered at #130, HMSA card at #131. Defense argues that again, there are clearly pieces of evidence that have been recovered comporting to scope

of the warrant and the search should have stopped at this point. If MPD wanted to search further there was no exigent circumstance preventing them from applying for another warrant that permitted for an expanded scope of search, but #132 reveals that now the Detective believes that the Apple phone box is going to contain “identification” and he recovers the box and opens it. The Defense maintains all early defenses, but in the best light for the Government, would argue that the search should have been terminated at the discovery of the driver’s license and all further evidence should be suppressed.

At #136 the phone case that visibly revealed Defendant’s Driver’s license and credit cards as seen in #137-138 would have terminated the search after satisfaction of Target #2 outside of the armrest, the pill bottle, the glovebox, etc., because the Defense argues it was actually on the phone, in plain view prior to the search, has been intentionally moved into the console armrest and placed below all the evidence claimed to have been legally recovered by the government to justify the complete search through all levels of the armrest.

Further, through a hearing or court ordered discovery, the body cam footage missing from the evidence will show the actual status of the phone, identification, and interior of the truck at the arrest site prior to the transfer to the Maui Impound yard. The defense argues that all evidence recovered in the armrest should be suppressed, or alternatively, that the court should find that when the targets of the warrant were satisfied the search should have been terminated and all evidence found after that point should be suppressed.

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Dated at Honolulu, Hawaii, March 24, 2023.

/s/ Joseph R. Mottl
Joseph R. Mottl, Esq.

Exhibits

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

United States of America,

Plaintiff,

vs.

Lyle Rikio Cummings,

Defendant.

Case: 1:22-CR-00023-DKW

Motion to Suppress Statements;
Declaration of Counsel; Memorandum of
Points and Authorities; Exhibits

Trial Date: June 5, 2023
Judge: The Hon. Derrick K. Watson

Motion to Suppress Statements

Defendant Lyle Rikio Cummings, through counsel, pursuant to Amendments 4, 5 and 6, *Constitution of the United States of America*, Article 1, Sections 7 and 14, *Constitution of the State of Hawaii*, and Rule 47, *Federal Rules of Criminal Procedure*, moves to suppress statements made by Defendant to federal and state law enforcement officers on grounds that his statements were procured in violation of his rights under *Constitution of the United States of America* and the *Constitution of the State of Hawaii*. The attached Declaration of Counsel, Exhibits, case file, related supplemental filings, and matters presented at hearing, support this motion.

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Dated at Honolulu, Hawaii, March 24, 2023.

/s/ Joseph R. Mottl
Joseph R. Mottl, Esq.
Attorney for Defendant
Lyle Rikio Cummings

Declaration of Counsel

I, Joseph R. Mottl, Attorney at Law, hereby declare:

1. I represent defendant **Kyle Rikio Cummings** herein.
2. I have interviewed the defendant and studied the discovery thus far disclosed to the defense.
3. Upon information and belief, the statements of fact in the attached memorandum are to the best of my knowledge and belief true.

I declare under penalty of law that the foregoing is true and correct to the best of my knowledge and belief.

Dated at Honolulu, Hawaii, March 24, 2023.

/s/ Joseph R. Mottl
Joseph R. Mottl, Esq.

Case 1:22-cr-00023-DKW Document 70 Filed 03/24/23 Page 3 of 4 PageID.217

Memorandum of Points and Authorities

The Defendant throughout his arrest and transportation to the detention at the MPD jail refused to grant permission to the Government to search his vehicles, phone or person and notified the Government that he wanted to exercise his right to be free from search and seizures without a valid warrant, his right not to incriminate himself and his right to have an attorney.

Defendant suffers notably from comprehension problems, inexperience in legal matters, and has diagnosed psycho-social disabilities that are exhibited in being easily persuaded and not wanting to trigger displeasure or hostility, especially from strangers or those in authority. Federal and State officers are trained to be aware of this and not take advantage of this or exert their authority in a manner designed to deny disabled Americans their constitutional rights.

At #162 Detective LeeAnn Galario-Guzman specifically acknowledges and records that the Defendant directly expressed intention to exercise his right to talk to his lawyer by stating to the Detective, "I want to talk to my lawyer." All further coercion or questioning should have ceased at this point under current Hawaii precedent, but Detective Guzman continued to coerce the Defendant acting like he should be reasonable and she was his friend who wanted to work with him, going on to admit that "I clarified if he wanted to talk to his lawyer because of the polygraph."

The Defendant replied, "Yes." All further coercion by the Detective should have stopped there. The Detective had no authority to waive the Defendant's right

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to the full protection of the attorney he requested by subsuming that attorney's authority to determine what defense strategies were available to the Defendant and which the attorney might advise the Defendant to waive and which the Defendant would exercise.

The Government is not permitted to break the constitutional rights of a defendant into components at their whim. Would the Detective have been constitutionally permitted to ask, "Okay, we will only talk about the Child Trafficking charges but not the drug charges without your attorney present because you want him present for the Child Trafficking charges?" Of course not – impermissible.

Further, on #48, the Warning of Rights form (MPD 103) referenced in the Detective's report (see #162) the Defendant clearly has circled "NO" as his answer to the question "would you like to waive your rights and speak with me now?"

In total, there are extraordinarily obvious grounds for this Honorable Court to grant the Motion to Suppress all statements that the Defendant made pursuant to the continuing coercion of the Government actors up until the time the Defendant actually was afforded his right to an attorney.

Dated at Honolulu, Hawaii, March 24, 2023.

/s/ Joseph R. Mottl
Joseph R. Mottl, Esq.

Exhibits

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UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. NO. 22-00023 DKW
)	
Plaintiff,	)	UNITED STATES' OPPOSITION
vs.	)	TO DEFENDANT'S MOTION TO
	)	SUPPRESS EVIDENCE, ECF 69;
	)	GOVERNMENT'S EXHIBITS 1-7;
LYLE RIKIO CUMMINGS,	)	CERTIFICATE OF SERVICE
)	
	)	Hearing: April 21, 2023 at 10:00 a.m.
Defendant.	)	Chief Judge Derrick K. Watson
)	

UNITED STATES' OPPOSITION TO DEFENDANT'S MOTION TO
SUPPRESS EVIDENCE, ECF 69

By and through the undersigned, the United States hereby files its opposition to Defendant Lyle Rikio Cummings' Motion to Suppress Evidence (the Motion to Suppress), filed on March 24, 2023, ECF No. 69.

I. SUMMARY OF ARGUMENT

A. Defendant's Suppression Motion Should Be Denied.

In the instant Motion to Suppress, without specifying what evidence should be suppressed, the defendant seems to be arguing generally that the bulk of the evidence found during the search of his truck on March 16, 2020 should be suppressed. The defendant's entire argument, however, has no legal basis and is not supported by the warrant itself. The defendant argues that, because the state search warrant authorized law enforcement to search the truck for the defendant's cell phone and for articles of identification, law enforcement was required to stop searching the truck as soon as it found the cell phone and any evidence of identification. According to the defendant, any item seized by law enforcement after that point in time was beyond the legally authorized scope of the search. The defendant provides no legal basis to support this argument.

On its face, the search warrant authorized law enforcement to search the *entire truck* for the cell phone and for any articles of identification in connection with the state enticement offense. Exhibit 1, gov't bates # 307 and 297. In doing

so, law enforcement was not required to stop as soon it found the first, or some items responsive to the search. The law plainly is not that restrictive and the defendant cites no support for his argument.

The defendant's argument also rests on the mistaken assumption that the bates numbering on the discovery produced to the defense by the government should be in chronological order as to the precise series of events related to the defendant's arrest and the search warrants' execution. However, the government has never made any representation to the defendant that the bates numbered and indexed discovery is all organized in a particular or precise chronological or sequential order.¹ The defense's arguments regarding discovery have no merit.

B. An Evidentiary Hearing with Witness Testimony is Unnecessary.

Based on the attached exhibits, an evidentiary hearing would not be necessary here to resolve disputed issues of material fact. The defendant does not appear to be disputing the accuracy of the exhibits attached to this response. Thus, the Court can view and rely on these exhibits as an undisputed recitation of events. *See* Exhibits 1-7.

¹ As is almost always the standard practice in this district, the bates numbers are part of the processing of discovery by the U.S. Attorney's Office to track, label, account for, and organize the discovery. It is also true that the government makes an effort to organize the discovery into related groups and sources, so that it is more understandable to review. The bottom line here is that the order of the bates numbers on the discovery images is irrelevant to resolving this motion to suppress.

A defendant is not entitled to an evidentiary hearing as a matter of right.

Defendant's uninformed assertions and misplaced assumptions about discovery matters and bates numbering are insufficient to create contested issues of fact on the scope of the search. And defendant does not challenge the plain view determination by officers regarding the obvious and apparent controlled substances found in the vehicle (*see Exhibit 3 (selected search warrant images of controlled substances found in the vehicle)*). Thus, it appears that there are no disputed material issues of fact that would require the testimony of witnesses at an evidentiary hearing.² Moreover, in resolving the issue of bates numbering, defendant does not appear to be challenging the uncontradicted evidence or any credibility issues relevant to the suppression issues that he raises.³

² See *United States v. Howell*, 231 F.3d 615, 620 (9th Cir. 2000) ("An evidentiary hearing on a motion to suppress need be held only when the moving papers allege facts with sufficient definiteness, clarity, and specificity to enable the trial court to conclude that contested issues of fact exist.") (citing *United States v. Walczak*, 783 F.2d 852, 857 (9th Cir. 1986), *United States v. Harris*, 914 F.2d 927, 933 (7th Cir. 1990), *United States v. Irwin*, 612 F.2d 1182, 1187 n.14 (9th Cir. 1980), and *United States v. Carrion*, 463 F.2d 704, 706 (9th Cir. 1972)); *United States v. Wardlow*, 951 F.2d 1115, 1116 (9th Cir. 1991) (the broad declaration of defense counsel asserting that the defense motion's statement of facts was based upon discovery, rather than a declaration from an individual competent to testify, was not sufficient to require the granting of an evidentiary hearing); *United States v. Marcello*, 731 F.2d 1354, 1358 (9th Cir. 1984) ("[T]o mandate an evidentiary hearing, the challenger's attack must be more than conclusory and must be supported by more than a desire to cross-examine.").

³ *United States v. Woodson*, No. CR 11-00531 WHA, 2011 WL 5884913, at *6 (N.D. Cal. Nov. 23, 2011) (denying a defense request for an evidentiary hearing because "mere refusal to accept the uncontradicted evidence does not create a material issue of fact"); *United States v. Walker*, 239 F. Supp. 3d 738, 739 (S.D.N.Y. 2017) ("While [an evidentiary hearing] might have been warranted if there were important credibility issues that could not be addressed from the paper record, the defendant has made no showing that that is the case here."); *United States v. Martinez*, 992 F. Supp. 2d 322, 325–26 (S.D.N.Y. 2014) ("A defendant is not entitled to an

II. BACKGROUND

On March 15, 2020, the defendant, Lyle Rikio Cummings, was arrested by the Maui Police Department (MPD) after engaging in an attempt to coerce and induce a 13-year-old minor to engage in sexual activity with him. ECF No. 1. Unbeknownst to Cummings at the time of his arrest, he was part of an online undercover operation where law enforcement posed as a 13-year-old girl. *Id.* On March 13-15, 2020, using an online communications platform as well as text messaging, Cummings traded a series of messages with the undercover officer. In the chats, Cummings offered to take who he believed was the girl shopping, sent her photographs of cash, offered her marijuana, and discussed engaging in sexual activity with her. Cummings drove to a designated meeting location in or around Kihei, Maui on March 15, 2020. He messaged around that time to the undercover officer that he was in a truck and that she should get in.

Cummings used the online username “DuckFat34” in communicating online. Before and after his arrest, investigators sought to identify the online chatter, “DuckFat34,” and connect the arrested Cummings to the online activity with the undercover officer. As part of their investigation, they executed search warrants.

evidentiary hearing in connection with a motion to suppress unless he can show that there are ‘contested issues of fact going to the validity of the search’ ” and in the absence of an affidavit “by someone with personal knowledge that disputed facts exist” an evidentiary hearing is unnecessary) (citations omitted).

MPD arrested Cummings on March 15, 2020, at the location where he was planning to meet the fictitious minor. *Id.* On March 16, 2020, in executing a search warrant on Cummings' vehicle after the arrest, law enforcement also found approximately 87 grams of cocaine packaged in small baggies, cocaine base (or "crack"), drug paraphernalia, and cash inside the vehicle, all in and around the center console. *Id.*; *see* Ex. 2, Search Warrant Return, gov't bates # 304; Ex. 3, Photographs from SW, bates #135, 134, 146, 128, 127, 123, 121, 117, 109.

Maui County charged Cummings with Electronic Enticement of a Child in the First Degree, in violation of Hawaii Revised Statutes §§ 707-756. Cummings was then charged in a two-count federal criminal complaint on June 18, 2021, with enticement of a minor, in violation of 18 U.S.C. § 3422(b), and the possession and distribution of controlled substances, in violation of 21 U.S.C. § 841(b)(1)(C). On March 24, 2022, he was indicted by a grand jury on two charges.

III. GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

A. Legal Summary

The Fourth Amendment requires that a search warrant describe with "particular[ity] ... the place to be searched and the persons or things to be seized."⁴

⁴ Defendant cites to Rule 47 of the Federal Rule of Criminal Procedure. The government presumes this is a typographical error and that the defense meant to refer to Rule 41 of the Federal Rules of Criminal Procedure. Defendant also cites generally to the Hawaii constitution,

U.S. Const. Fourth Amend. “The mere fact that evidence obtained by state officers, under a state warrant, based upon violations of state law, is used in a federal prosecution does not invoke the requirements of Rule 41. In such cases the standard is whether the warrant comports with the requirements of the Fourth Amendment.” *United States v. Crawford*, 657 F.2d 1041, 1046 (9th Cir. 1981).

The Supreme Court has stressed that suppression of evidence should be “our last resort, not our first impulse.” *Hudson v. Michigan*, 547 U.S. 586, 591 (2006). Suppression is appropriate only if a Fourth Amendment violation is the but-for cause of the government obtaining the challenged evidence. *United States v. Rosenow*, 50 F.4th 715, 736-37 (9th Cir. 2022).

The inevitable discovery exception permits the admission of evidence that ultimately or inevitably would have been discovered by lawful means. *Nix v. Williams*, 467 U.S. 431, 444 (1984). The government must prove that the relevant evidence would have been inevitably discovered by a preponderance of the evidence. *Id.* If an officer would have inevitably impounded a car and then conducted an inventory search, it is irrelevant whether a prior search of the car was unlawful. *United States v. Ruckes*, 586 F.3d 713, 718-19 (9th Cir. 2009). The defendant’s car was impounded at Kihei Police Station upon his arrest.

which he does not explain further and is not relevant to this federal case. The relevant inquiry here is whether the search of the vehicle violated the Fourth Amendment.

B. Defendant's Motion Has No Support in Law or Fact.

The defendant's entire argument rests on the mistaken belief that law enforcement was required to stop searching the defendant's truck as soon as law enforcement found the cell phone and any evidence of identification. This is not the law and the defendant cites to no case law in support of his argument. The state search warrant at issue, filed and executed on March 16, 2020, one day after the defendant's arrest, authorized law enforcement to search the designated vehicle (the impounded truck) that defendant had driven to meet a person he believed to be a 13-year-old minor. *See Exhibit 1.*

On its face, the search warrant states that for the state offense of enticement, there was probable cause to search the vehicle for:

(1) a touchscreen cellular phone;⁵ (2) articles of identification or items containing the name(s), photographic impressions, latent fingerprints or palm prints, handwriting or printing of Cummings and other such articles or items which would serve as evidence of ownership, occupancy, possession, or control of the above-described TARGET VEHICLE. Such items may include driver's licenses, identification cards, passports, certificate of the title, registration paperwork, insurance or other motor vehicle cards, pay stubs, and mail or other personal items addressed to Cummings.

Id.

⁵ Law enforcement also obtained a separate search warrant to later search the cell phone after it had been seized, but this warrant is not relevant to this suppression motion.

There is nothing on the face of the warrant or in the case law that limits law enforcement to searching for just one item of identification in this case.⁶ Law enforcement was entitled to search the entire truck for the items above, and was entitled to find and seize as many articles of identification as described in the search warrant that it could find.⁷

The defendant does not appear to challenge that there was ample probable cause to search the truck, *i.e.*, the entire truck. Not only was the truck facilitating property in the offense, but it was also a key to locate evidence tied to the offense, including identity attribution of Cummings as Duckfat—the online chatter, ensure the truck was the one Cummings was referring to in the online messages, the phone containing the online messages, and other items tied to or corroborating

⁶ Law enforcement may search for the items described with particularity in the warrant in the location to be searched described in the warrant. The plain language of the warrant is controlling. “A policeman’s pure heart does not entitle him to exceed the scope of a search warrant, nor does his ulterior motive bar a search within the scope of the warrant, where the warrant was properly issued. Ulterior motive may be evidence justifying an inference that the search exceeded the scope of the warrant, as in *Rettig*, but it is not the determining factor, where the warrant itself was properly issued. **The determination to be made is whether the police confined their search to what was permitted by the search warrant.** ‘It is, of course, an essential predicate to any valid warrantless seizure of incriminating evidence that the officer did not violate the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed.’” *United States v. Ewain*, 88 F.3d 689, 694 (9th Cir. 1996) (citing *Horton*, 496 U.S. at 136) (emphasis added).

⁷ The defense argues that the officers may have intentionally moved the cell phone into the console armrest below other evidence to justify the search through the console. In addition to the fact that the defense has no basis for this accusation, there would have been no need for the officers to do this. They were authorized by the search warrant to search the *entire* vehicle for the items listed in the search warrant, including evidence of identification which could well have been inside the console.

Cummings' involvement in the offense. *See, e.g.*, Ex. 4 (Photograph of DuckFat Hat, gov't bates # 106).

During the search, law enforcement was also entitled to seize contraband that it discovered in plain view, including the drugs and drug paraphernalia. *See* Exhibit 2, Return of the Search Warrant. The plain view exception to the warrant requirement was first recognized in *Coolidge v. New Hampshire*, 403 U.S. 443, 465 (1971) (plurality opinion). There are three essential elements: The police must show that they "did not violate the Fourth Amendment in arriving at the [p]lace from which the evidence could be plainly viewed." *Horton v. California*, 496 U.S. 128, 139-40 (1990); *Thompson v. Louisiana*, 469 U.S. 17, 22 (1984). The seizing officer must have a lawful right of access to the evidence. *See Horton*, 496 U.S. at 136-37. The incriminating nature of the evidence seized must be immediately apparent. *Id.* "Immediately apparent" means that police have probable cause to believe an object in plain view is contraband. *Minnesota v. Dickerson*, 508 U.S. 366, 375 (1993).

All three of these elements are met here. The drugs were found in the truck while the officers were searching for evidence as part of the execution of the search warrant. Exhibit 3 (selected images from the search warrant). The drugs were kept with drug paraphernalia, which was immediately recognizable as such. *Id.* And the drugs themselves, later tested to be cocaine and crack, were kept in

small baggies and identified as a white powder and white rock-type substance. *Id.* Besides the cocaine and crack, law enforcement also located marijuana along with Cummings' medical marijuana card. In any case, the drugs would have been inevitably discovered because the truck was properly impounded by officers, so the inevitable discovery doctrine also applies.

Next, the defendant argues throughout its brief that there is something improper about the bates numbering on the documents provided to the defendant by the government. *See generally Motion to Suppress.* This argument is based on the mistaken assumption that the government produced bates numbered discovery that represented a specific or precise chronology or sequence of events. Operating under this incorrect assumption, the defendant makes arguments that discovery is missing or that items in the search were moved in particular or suspicious ways.⁸

With no basis whatsoever, the defense argues that law enforcement continued to search the Defendant's vehicle as a "retaliatory fishing expedition." *See Motion p. 6.* The defense argues that law enforcement wanted to retaliate

⁸ In affixing bates numbers to documents at the U.S. Attorney's Office as part of the discovery process in this case, the government did not attempt to add the bates numbers in a specific chronological or precise sequential order of events (although some may be), nor is it required to do so, nor did it ever represent to the defense that the bates numbers reflected such a chronology. Even if the bates numbered discovery is grouped together logically or in some type of general chronology, the precise chronology or order in which law enforcement searched the truck is immaterial to the suppression issues here. MPD was authorized to search the entire truck for any items responsive to the search warrant.

against the Defendant for refusing consent to search his phone and truck. *Id.* This argument is nonsensical and has no legal basis for suppression. Law enforcement asked for consent to search (see Exhibits 6 and 7, Arrest Videos, gov't bates ## 94-95), and when the defendant did not provide such consent, law enforcement followed the proper procedure of obtaining search warrants supported by probable cause. In obtaining the search warrants, MPD followed appropriate legal process. The defendant's retaliation argument is also unsupported by the undisputed facts. There are two arrest videos produced in discovery and exhibited here that show that the officers responded calmly and professionally when the defendant refused consent to search and in no way tried to pressure the defendant on this point. *Id.*

The defense makes yet another specious argument that the government "has never articulated how the vehicle was in any way an element of the offense." Motion p. 3. This argument is another misunderstanding of the law and the defendant provides no legal support for it. In obtaining a search warrant of a physical place to be searched (e.g., a residence or vehicle), there is no requirement that the place to be searched *also* be an element of the suspected offense itself.

Rather, the law requires just that there is probable cause to believe that evidence tied to the offense will be found in that location.⁹ The defendant does not

⁹ Probable cause to search means "a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983).

argue that there was not probable cause or appear to challenge the validity of the underlying search warrant here. The vehicle searched in this case is the actual truck that the defendant drove to meet up with the person he believed to be 13-years-old for sex. There was every reason to believe there would be evidence of the charged crime of enticement, and the state search warrant expressly provides that there was probable cause to search the truck. The truck was integral to the crimes as well as facilitating property.¹⁰

Additionally, the defendant's point regarding whether any other defendants were arrested in connection with the same law enforcement operation is irrelevant and immaterial the motion to suppress. *See Motion p. 3.*

C. Discovery Matters Have No Bearing on the Motion to Suppress.

Finally, the defendant suggests in its Motion to Suppress that the government has somehow not produced sufficient discovery. This is the first time the government is hearing that the defense believes there is missing discovery. In fact, prior to this motion, defense counsel has *never* asked the government to

¹⁰ Although officers obtained a search warrant and conducted a legal search within the parameters of their warrant, it is worth referencing the automobile exception. The automobile exception allows an officer to conduct a search of a vehicle if there is probable cause that it contains evidence of a crime. *United States v. Ross*, 456 U.S. 798, 799, 806-09 (1982). This exception extends to any part of the vehicle and any containers that might contain evidence of that particular crime. *Id.* at 821-24. It also applies even if the search is not conducted until after the vehicle has been immobilized or impounded, *Michigan v. Thomas*, 458 U.S. 259, 261 (1982) (per curiam); *United States v. Garcia*, 205 F.3d 1182, 1187-88 (9th Cir. 2000); and even if containers are removed from the vehicle and then searched without unreasonable delay, *United States v. Johns*, 469 U.S. 478, 485-88 (1985).

provide additional discovery, other than perhaps asking for a complete set of discovery when first appearing in this case. Defense counsel has *never* even reached out to the government asking if any discovery is missing, or asking about any body camera or other video footage.

This is a relatively simple case and the discovery is not voluminous. To allege that the government has been “very slow” to turn over documentation is plainly false. *See* Motion p. 3. The government turned over the bulk of discovery in this case in 2021 and April of 2022. The only discovery that the defense specifically addresses in his motion is body camera footage. *Id.* The defense, for the first time ever in this case, states that it believes there is missing body camera footage, but provides no specific basis for this belief. *Id.* The government has produced two videos of the arrest¹¹ as well as a video of Defendant being interviewed by two law enforcement agents following his arrest. *See* Exhibits 5-7, gov’t bates ## 334, 94, and 95. The defense also writes that missing footage of the arrest would show the interior of the truck at the arrest site prior to its transfer to the impound yard. Motion p. 8. Indeed, an arrest video that the government long-ago produced to the defense *does* show the interior of the truck before it was

¹¹ Although irrelevant because the government has produced two videos depicting the initial arrest, the government has repeatedly asked MPD if these two videos were created by way of body cameras. MPD has indicated that these arrest videos were not taken with body cameras and that there is no body camera footage related to this case.

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transferred to the impound yard. *See* Exhibits 6-7. There is nothing about this footage that merits suppression of any evidence.¹²

CONCLUSION

Therefore, the government respectfully requests that the defense motion be denied in its entirety as it is without legal merit, and submits that no evidentiary hearing is needed.

DATED: April 14, 2023, at Honolulu, Hawaii.

Respectfully Submitted,

CLARE E. CONNORS
United States Attorney
District of Hawaii

By *Christine Olson*
Christine Olson
REBECCA A. PERLMUTTER
Assistant U.S. Attorneys

Attorneys for Plaintiff
UNITED STATES OF AMERICA

¹² In light of this motion, the government has diligently inquired of law enforcement about any additional video footage, and all video footage in this case has been previously and timely produced to the defendant.

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CERTIFICATE OF SERVICE

I hereby certify that, on the dates and by the methods of service noted below, a true and correct copy of the foregoing was served on the following via email:

JOSEPH R. MOTTL, III

Counsel for defendant Lyle Rikio Cummings

DATED: April 14, 2023, at Honolulu, Hawaii.

/s/ Christine Olson

United States Attorney's Office
District of Hawaii

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FILED

2020 MAR 16 AM 8:28

V. ISHIHARA, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

IN THE DISTRICT COURT OF THE SECOND CIRCUIT
WAILUKU DIVISION
STATE OF HAWAI'I

IN RE APPLICATION FOR	)	SEARCH WARRANT NO. <u>SW2020-0123</u>
)	
A SEARCH WARRANT)	
	)	SEARCH WARRANT
BY THE STATE OF HAWAI'I)	
)	

SEARCH WARRANT

THE STATE OF HAWAII TO THE CHIEF OF POLICE OF THE COUNTY OF MAUI,
OR HIS DEPUTY, OR ANY POLICE OFFICER OF THE COUNTY OF MAUI OR ANY
INDIVIDUAL OR ENTITY CHARGED WITH PROVIDING TECHNICAL ASSISTANCE
TO ANY DEPUTY OR POLICE OFFICER:

Proof by Affidavit, having been made before me this **16th**
Day of March, 2020 by Det. Gregg K. Katayama., of the Maui County
Police Department, that there is sufficient probable cause for me
to direct that a search be made at, on, and within the following
TARGET VEHICLE:

The vehicle is a white 2008 Toyota Tacoma pickup truck
bearing Hawaii license plates LAJ 777 (hereinafter
referred to as **TARGET VEHICLE**). The vehicle is

S-1

I hereby certify that this is a full, true, and
correct copy of the original.


Clerk, Second Judicial Circuit

EXHIBIT 1

000038

registered to **Lyle CUMMINGS** (hereinafter referred to as **CUMMINGS**), who is the alleged offender in the above mentioned offense(s) being investigated;

That Affiant has probable cause to believe that at, on, and within the VEHICLE there may presently be located the following:

1. A touchscreen cellular phone;
2. Articles of identification or items containing the name(s), photographic impressions, latent fingerprints or palm prints, handwriting or printing of **CUMMINGS** and other such articles or items which would serve as evidence of ownership, occupancy, possession, or control of the above-described **TARGET VEHICLE**. Such items may include driver's licenses, identification cards, passports, certificate of title, registration paperwork, insurance or other motor vehicle cards, pay stubs, and mail or other personal items addressed to **CUMMINGS**;

That the above items constitute the fruits, instrumentalities, and/or evidence of the offenses of Electronic Enticement of a Child in the First Degree, in violation of Hawaii Revised Statutes (HRS) § 707-756, and documented under report number 20-010287, and, that such items are subject to Seizure under Rule 41(b) of the Hawaii Rules of Penal Procedure; and as I am satisfied that there is probable cause to believe that the items so described will be present at, upon, and within the above described **TARGET VEHICLE** and that there is grounds for the issuance of a Search Warrant;

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YOU ARE HEREBY COMMANDED to make a search of the above-described TARGET VEHICLE for the items so described, serving this Search Warrant and making the search within TEN (10) DAYS from the date hereof, but not between the hours of 10:00 o'clock P.M. and 6:00 o'clock A.M., and if said items be found there to seize them leaving a copy of this Search Warrant and bring the inventory for the items seized before the Judge of the above-entitled Court promptly, as required by law.

DATED: Wailuku, Hawaii, March 16th, 2020.

Sgd./Kirstin Hamman (Seal)

Judge of the above-entitled Court

Case 1:22-cr-00023-DKW Document 74-1 Filed 04/17/23 Page 4 of 10 PageID.240

FILED

2020 MAR 16 AM 8:28

V. SHIHARA, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

IN THE DISTRICT COURT OF THE SECOND CIRCUIT
WAILUKU DIVISION
STATE OF HAWAI'I

IN RE APPLICATION FOR) SEARCH WARRANT NO. SW2020-0123
)
A SEARCH WARRANT)
)
BY THE STATE OF HAWAI'I)
)
)
) AFFIDAVIT IN SUPPORT OF
)
) SEARCH WARRANTS

AFFIDAVIT IN SUPPORT OF SEARCH WARRANTS

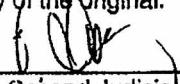
STATE OF HAWAI'I)
) ss.
COUNTY OF MAUI)

I, Detective Gregg K. Katayama (Affiant), first being
duly sworn, on oath deposes and says:

I am a law enforcement officer empowered to investigate
and make arrests for criminal violations occurring in the County
of Maui, State of Hawaii. I am currently a member of the Maui
County Police Department and have been so employed since April 04,

I hereby certify that this is a full, true, and
correct copy of the original.

A-1


Clerk, Second Judicial Circuit

000041

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2000. I am presently assigned to the Criminal Investigation Division;

I am assisting in investigating the alleged offenses of Electronic Enticement of a Child in the First Degree, in violation of Hawaii Revised Statutes (HRS) § 707-756, documented under report number 20-0100287, occurring within the County of Maui, State of Hawaii and have probable cause to believe that the fruits, instrumentalities, or evidence of those crimes may currently be located at, on, and within the following **TARGET VEHICLE**:

The vehicle is a white four door 2008 Toyota Tacoma pickup truck bearing Hawaii License Plates LAJ 777 (hereinafter referred to as **TARGET VEHICLE**). The vehicle is registered to **Lyle CUMMINGS** (hereinafter referred to as **CUMMINGS**), who is the alleged offender in the above mentioned offense(s) being investigated;

As detailed later in this Affidavit, there is probable cause to believe that at, on, and within the **TARGET VEHICLE** there may presently be located the following:

1. A touch screen cellular phone
2. Articles of identification or items containing the name(s), photographic impressions, latent fingerprints or palm prints, handwriting or printing of **CUMMINGS** and other such articles or items which would serve as evidence of ownership, occupancy, possession, or control of the above-described **TARGET VEHICLE**. Such items may include driver's licenses, identification cards, passports, certificate of title, registration paperwork, insurance or other motor vehicle cards, pay stubs, and mail or other personal items addressed to **CUMMINGS**;

The above items constitute the fruits, instrumentalities, and/or evidence of the offenses of Electronic Enticement of a Child in the First Degree, in violation of Hawaii Revised Statutes (HRS) § 707-756, documented under report number 20-010287, occurring within the County of Maui, State of Hawaii, and that such items are subject to Seizure under Rule 41(b) of the Hawaii Rules of Penal Procedure;

And that the facts establishing grounds for the issuance of the requested Search Warrant(s) are as follows:

INTRODUCTION:

1. That Affiant has been employed by the Maui Police Department since April 03, 2000 and is currently assigned to the Criminal Investigation Division;
2. I have received training from Detectives with the Maui Police Department in the investigation of felonious offenses including interview and interrogation techniques, evidence collection and preservation, crime scene searches, the use of search warrants, computer and electronic evidence, and documentation of investigations;
3. I have been trained by Vice Officers with the Maui County Police Department's Vice/Narcotics Division in identification of illegal narcotics, the testing of illegal narcotics, investigative techniques for different types of illegal narcotics cases and the methods of distribution utilized by individuals who traffic illegal narcotics.
4. The Affiant's experience as a Police Officer includes, but is not limited to, assignments in the Criminal Investigation Division, crime scene investigation, interviewing of witnesses. That Affiant has received training in and is experienced in the investigation of violations of state statutes, including the offenses listed above, and has been involved in over one hundred (100)

criminal investigations;

6. I have received training in firearms and ammunition identification and recognition from firearms instructors with the Maui Police Department;
9. This Affidavit is based upon ongoing investigations by Law Enforcement Officers of the Maui County Police Department, documented under report number 20-010287;
10. The scope of the information presented in this warrant lays out facts and circumstances of the investigations that show that there is probable cause for the requested Search Warrant. This Affidavit does not set forth all of my knowledge regarding this investigation;

FACTS AND CIRCUMSTANCES:

11. On March 13th, 2020 at about 02:00 p.m., an on-line undercover investigation was initiated with an undercover officer (Detective John Surina with the Maui County Police Department) posing as 13-year-old juvenile female;
 - a. On March 14th, 2020 at about 7:37 p.m., an individual with the screen name of "DuckFat", later identified as **Lyle CUMMINGS** (hereinafter referred to as **CUMMINGS**) started a private chat on the social media communication application known as "Skout" with the undercover officer's account;
 - b. Officer disclosed that she was under the age of 18 and that **CUMMINGS** continued to engage in messaging with the undercover officer;
 - c. The conversation became sexual in nature, and **CUMMINGS** sent several texts relating the following: "Eat your pussy", "I'm gonna eat you till you cum a few times on my face babes", "get your pussy so wet";
 - d. **CUMMINGS** then agreed to go to a designated location of the intersection of Kiloohana Drive and South Kihei Road, County of Maui, State of Hawaii;
 - e. At approximately 07:46 p.m., Surveillance officers observed **CUMMINGS**, who was operating a white 2008 Toyota Tacoma Pickup

truck bearing Hawaii license plate **LAJ 777**, arrive at the Kilohana Drive and South Kihei Road intersection;

- f. At 07:48 p.m., the undercover officer received the following messages "Where you", "Come jump in" "Hurry up";
- g. At about 7:50 p.m., **CUMMINGS** was arrested for the offenses of Electronic Enticement of a Child in the First Degree, in violation of Hawaii Revised Statutes (HRS) § 707-756;
- h. After being advised of his rights, **CUMMINGS** refused to give officers consent for them to search his vehicle;
- i. Within the center console of his truck, a touch screen cellular phone was observed;
- j. Undercover officer sent a "test" message to DuckFat's account and upon monitoring **CUMMING'S** phone, they observed the test message pop up;
- k. **LAJ 777** was towed, secured and impounded at the Kihei Police Station, 2201 Pi'ilani Highway, County of Maui, State of Hawaii;

REQUEST FOR SEARCH WARRANT:

12. Based on the information contained within this Affidavit, there is probable cause to believe that **Lyle CUMMINGS** has committed the offenses of Electronic Enticement of a Child in the First Degree, in violation of Hawaii Revised Statutes (HRS) § 707-756, documented under report number 20-010287;

13. In addition, there is probable cause to believe that the following items, which will constitute the fruits, instrumentalities, or evidence of the offenses under investigation may presently be located within the **TARGET VEHICLE**:

- a. A touchscreen phone;
- b. Articles of identification or items containing the name(s), photographic impressions, latent fingerprints or palm prints, handwriting or printing of **CUMMINGS** and other such articles or items which would serve as evidence of ownership, occupancy,

possession, or control of the above-described **TARGET VEHICLE**. Such items may include driver's licenses, identification cards, passports, certificate of title, registration paperwork, insurance or other motor vehicle cards, pay stubs, and mail or other personal items addressed to **CUMMINGS**;

14. As such, I respectfully request issuance of Search Warrant(s) by this Honorable Court that authorizes a search of the **TARGET VEHICLE** bearing license plates **LAJ777 (HI)**, as probable cause exists to search the **TARGET VEHICLE** for the items listed above which constitute the fruits, instrumentalities, and evidence of the has committed the offenses of Electronic Enticement of a Child in the First Degree, in violation of Hawaii Revised Statutes (HRS) § 707-756, and documented under report number **20-010287** and, that such items are subject to Seizure under Rule 41(b) of the Hawaii Rules of Penal Procedure;

REQUEST FOR SEALING:

15. Should the requested search warrants be issued, I am requesting issuance of an Order that orders that the requested search warrants, this Affidavit, and any associated paperwork and filings be sealed upon filing with the clerk on the court and remained sealed unless and until ordered to be unsealed by the District or Circuit Court of the Second Circuit. I make this request as the Affidavit contains personal and confidential information of the suspect, as well as identifying information on the victim of a sexual assault. The affidavit also contains details related to sexual offenses, which if the details became known, could be socially damaging or embarrassing for the victim and which could provide associates of the suspect with information needed to intimidate or bribe the victim into no longer cooperating with law enforcement and prosecutor staff;

CONCLUSION:

16. Based upon the information contained within this Affidavit which details the investigation to date, I believe that the requested search warrant authorizing search of the **TARGET VEHICLE** bearing Hawaii Plates **LAJ777**, located at **2201 Pi'ilani Highway, County of Maui, State of Hawaii**, the **Kihei Police Station**, will result in the recovery of items that constitute the fruits, instrumentalities or evidence of the offenses that are under investigation and respectfully seek issuance of said request search warrant(s); and

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That further Affiant sayeth naught.



Det. Gregg K. Katayama.
CRIMINAL INVESTIGATION DIVISION
MAUI POLICE DEPARTMENT

Subscribed and sworn to before me
this 16th day of March, 2020

Sgd./Kirstin Hamman (Seal)

Judge of the above-entitled Court

SW2020-0123

IN THE DISTRICT COURT OF THE SECOND CIRCUIT
WAILUKU DIVISION
STATE OF HAWAII

IN RE THE APPLICATION OF)
)
A SEARCH WARRANT)
)
BY THE STATE OF HAWAII)
_____)

RETURN AND AFFIDAVIT

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

V. SHIHABAH, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

FILED

2020 MAR 23 AM 9:15

The undersigned, having received the foregoing Search Warrant dated the 16th day of March 2020, executed it as follows:

On the 16th day of March, 2020, at 10:52 o'clock a.m, I served a copy of the Search Warrant upon a white 2008 Toyota pickup truck bearing HI license plates LAJ 777 and searched the vehicle as described in said Search Warrant; and seized the properties shown in the inventory attached hereto and marked EXHIBIT "A".

I hereby certify that this is a full, true and correct copy of the Original.

6/18
Clerk, Second Circuit Court

-R1-

EXHIBIT 2

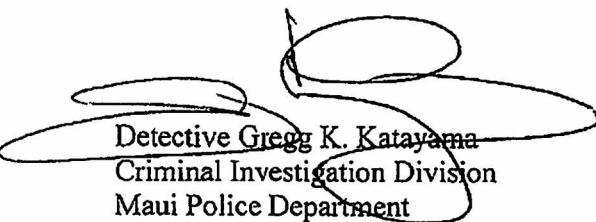
000048

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I left a receipt for the properties shown in said inventory within said vehicle.

This inventory was made in the presence of Detective J. ACOSTA.

I swear that the inventory attached hereto is a true and detailed account of all the properties taken by me on the Search Warrant.



Detective Gregg K. Katayama
Criminal Investigation Division
Maui Police Department

Subscribed and sworn to and returned

before me this 23th day of

March, 2020.

Sgd./Douglas J. Sameshima (Seal)

District Judge of the above-entitled Court

-R2-

000049

JN 6/20-0123

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EXHIBIT "A"

The items listed below were recovered as evidence following the execution of a search warrant at 2201 Pillows Hwy. Kilauea, County of Maui, on 3/16/20 at 1052 hours.

- 1) 1 - PHONE FOUND ON CENTER CONSOLE
- 2) FIVE PURPORTED MARIJUANA CIGARETTES FOUND WITHIN CUP HOLDER
- 3) COOKIES BRAND LEMON COOKIES THE CENTER CONSOLE AREA
- 4) A FOUR PACKETS W/ WHITE POWDER W/IN SASSOLINI TIN
 - B SIX PACKETS W/ WHITE POWDER W/IN " " CONTAINER
 - C FOUR PACKETS W/ WHITE BEANS "
 - D. B MARIJUANA TORCH
 A TO D FOUND W/IN BLACK PURSE LOCATED W/IN CENTER CONSOLE
- 5) US CIGARETTES 30 X 20 4 X 10 1 X 5 TOTAL \$ 645.-
 FOUND W/IN BLACK BAG
- 6) HDL H00393826 LYLE CUMMING FOUND W/IN CENTER CONSOLE
- 7) FOUR PACKETS W/ WHITE POWDER W/IN 1-PHONE CASE
 FOUND W/IN CENTER CONSOLE
- 8) BURGUNDY LIGHTER FOUND W/IN CENTER CONSOLE AREA
- 9) A) E-GO BRAND CASE
 - B) NAPING DEVICE
 - C) SMALL CONTAINER W/ BROWN RESINS
 - D) MULTI-COLOR CONTAINER W/ BROWN RESINS

END 1130 hrs.

Recipient: _____ Witnessed by: _____

Date: 3/16/20 Time: 1130 AM

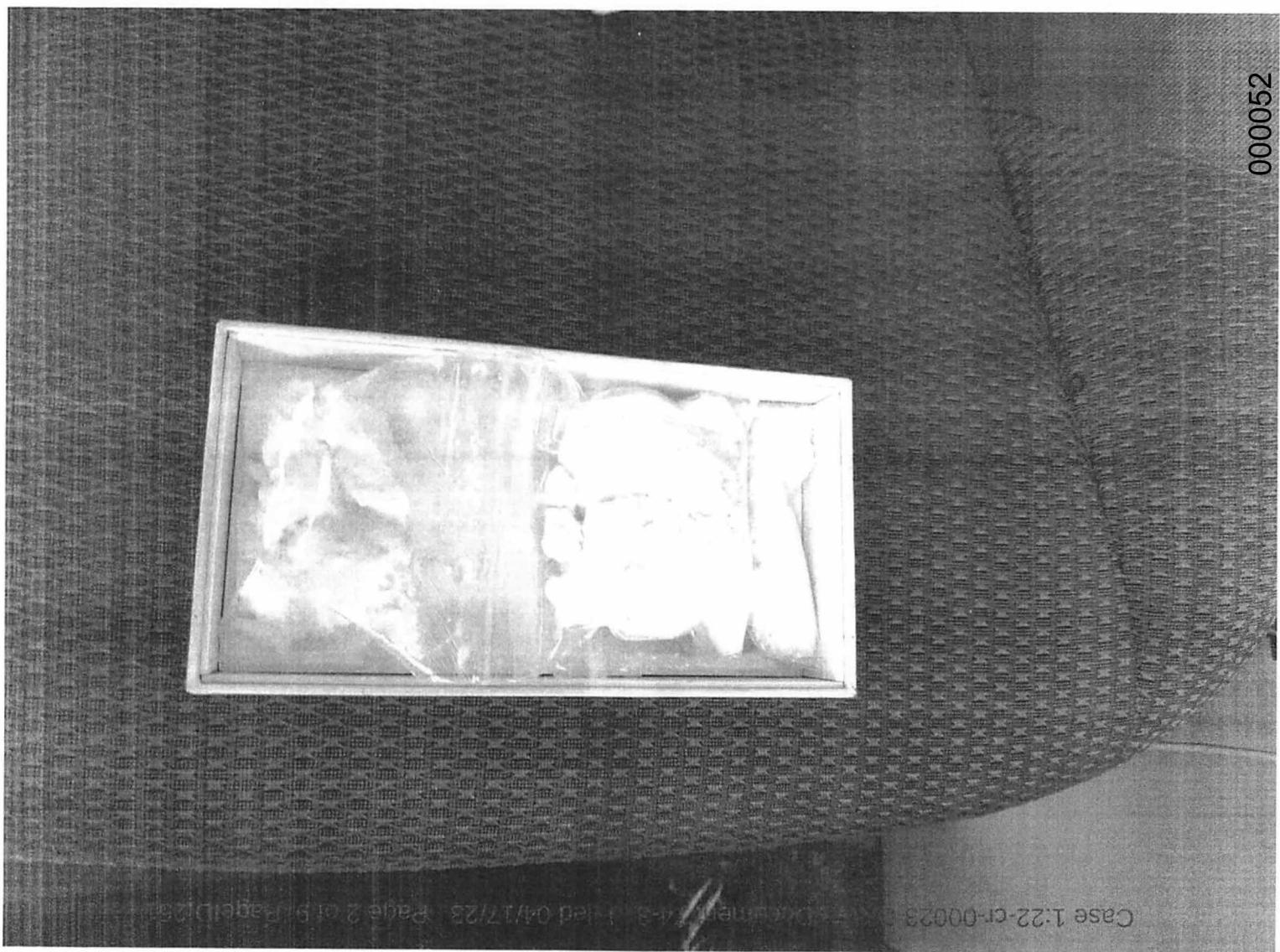
Witnessed by: DET. J. B. G. 10653

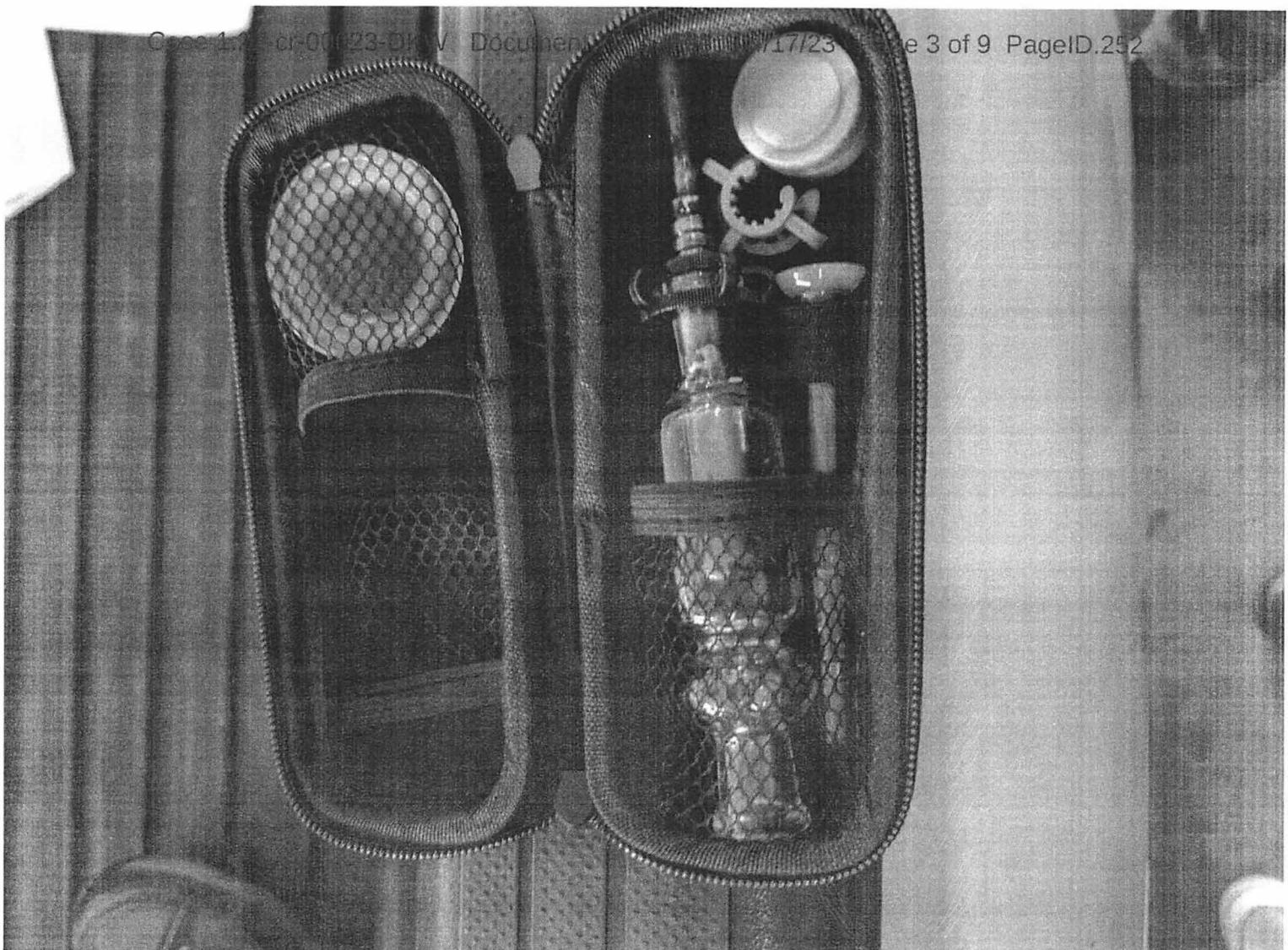
Date: 3/16/20 Time: 1130



EXHIBIT 3

000051





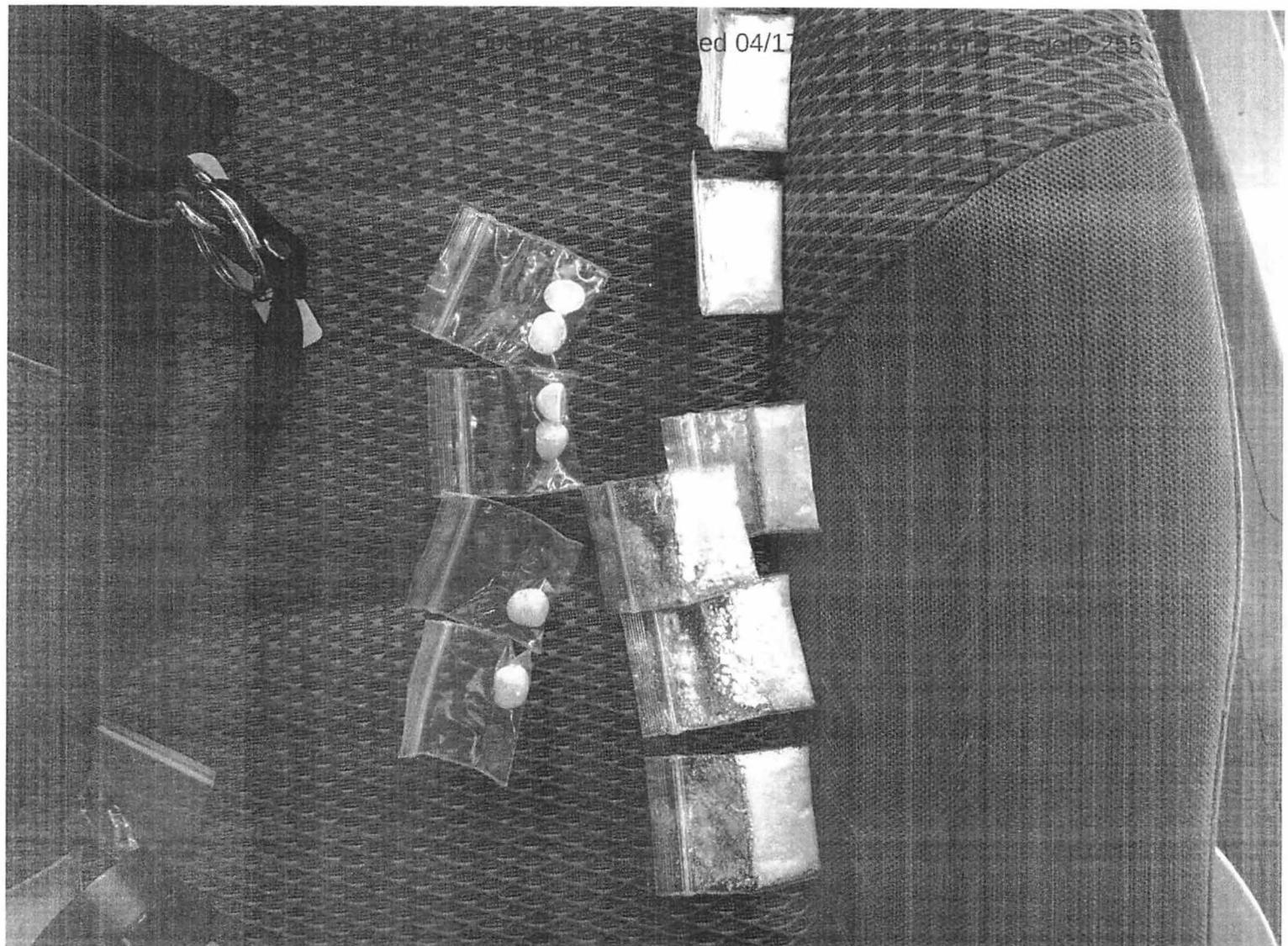
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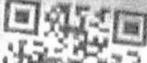
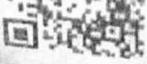
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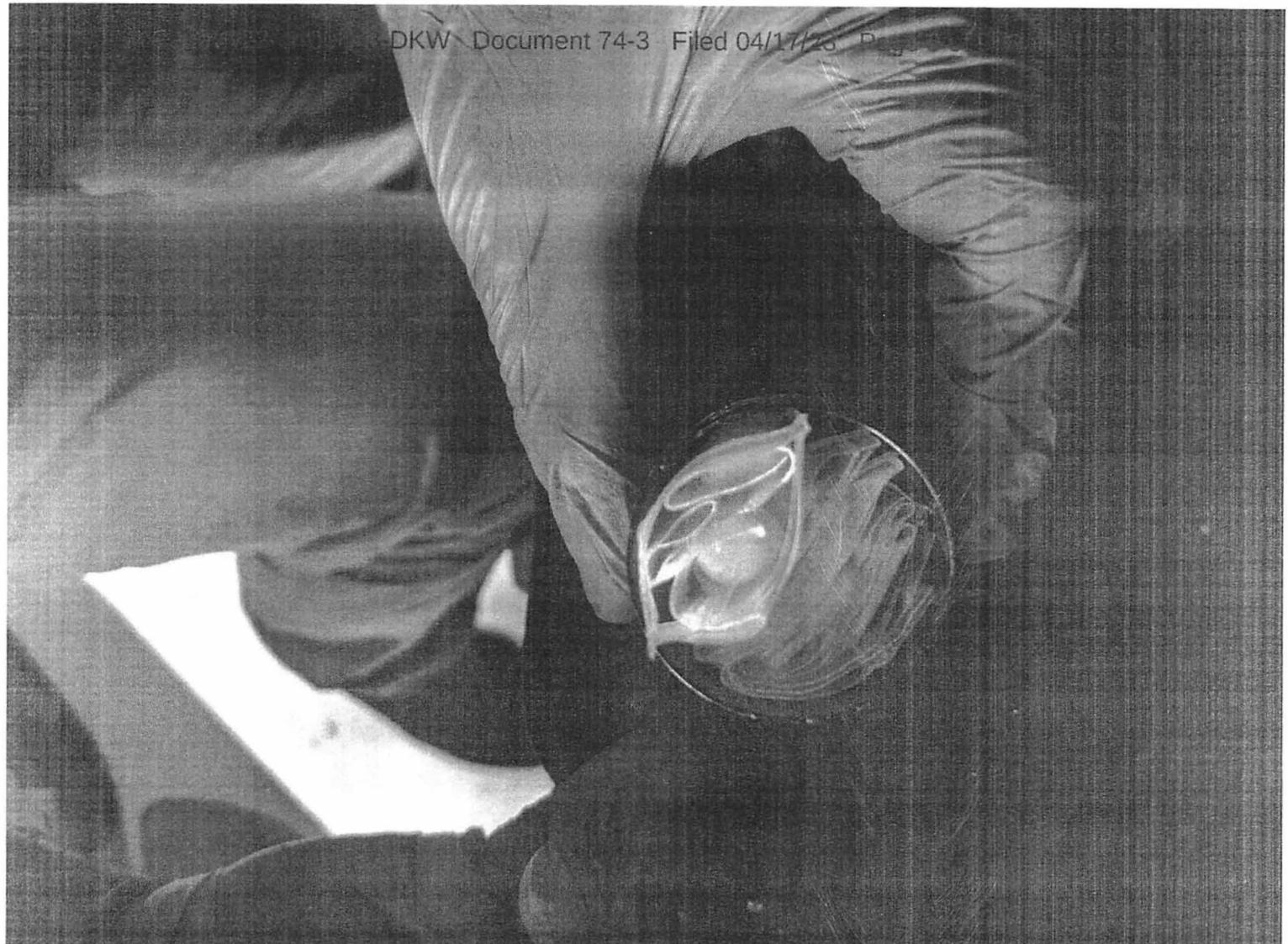
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Case 1:22-cr-00000

 PW Blue Zkittles 2g Infused Preroll
 02/18/2020
9944 4666 0934 8687

000057



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000058



000059



0900000

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EXHIBIT 5

Video – Interview 2.avi

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EXHIBIT 6

Video – IMG_0036.MOV

Case 1:22-cr-00023-DKW Document 74-7 Filed 04/17/23 Page 1 of 1 PageID.262

EXHIBIT 7

Video – IMG_0037.MOV

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Attorneys for Plaintiff
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. NO. 22-00023 DKW
)	
Plaintiff,	)	UNITED STATES' OPPOSITION
vs.	)	TO DEFENDANT'S MOTION TO
	)	SUPPRESS STATEMENTS, ECF 70;
	)	GOVERNMENT'S EXHIBITS 1-
	)	5; DECLARATION OF ANDREW
	)	CABRAL (EXHIBITS A-D)
	)	CERTIFICATE OF
	)	SERVICE
LYLE RIKIO CUMMINGS,)	
)	
Defendant.	)	Hearing: April 21, 2023 at 10:00 a.m.
	)	Chief Judge Derrick K. Watson
)	

**UNITED STATES' OPPOSITION TO DEFENDANT'S MOTION TO
SUPPRESS STATEMENTS, ECF 70**

By and through the undersigned, the United States hereby files its opposition to Defendant Lyle Rikio Cummings' Motion to Suppress Statements (the Motion to Suppress), filed on March 24, 2023, ECF No. 70. The motion papers and exhibits before the Court show that Defendant's arguments are without legal merit. There are also no material facts or omissions in dispute that would warrant an evidentiary hearing—the Court can decide the legal issues based on the motion papers and supporting exhibits without the need for additional testimony or credibility determinations.

I. SUMMARY OF ARGUMENT

A. Defendant's Arguments in the Motion to Suppress Have No Merit.

In the instant Motion to Suppress, without providing any legal support or citing to any case law, the defendant argues that his statements made to federal and state law enforcement officials should be suppressed. In his motion, the defendant fails to identify which statements should be suppressed. For purposes of this response, and based on the context of the motion, the government assumes the defense is attempting to suppress a March 15, 2020 post-arrest recorded interview of the defendant with law enforcement. In that video recording, the

defendant effectively admits to the conduct underlying the enticement charge (referred to as the “Video Interview”).

Without stating as such, the defendant appears to now be generally challenging voluntariness, whether he invoked his right to counsel during the Video Recording (such that any statements after that invocation would be suppressed), and whether the defendant invoked his right to remain silent at the outset of his post-arrest interview on a waiver of rights form. Defendant’s arguments on voluntariness are unsupported and contrary to the undisputed evidence attached to this response. Defendant’s argument about the invocation of his right to a lawyer during the Video Recording was specifically tailored to an issue about a polygraph and not about the continued questioning in the Video Recording. Defendant’s arguments about the waiver of rights form involves a basic factual misunderstanding of the proper form attached to the post-arrest interview in the Video Recording.

Besides the statements in the Video Interview, the government is not aware of other statements that would have an arguable basis for suppression in this case. However, in an abundance of caution to address all pertinent statements made by the defendant, the government points out that the defendant did tell MPD officers the passcode to his cellular telephone during his initial arrest on March 15, 2020. Clear video of the arrest shows that Defendant was given his *Miranda* rights just

prior to giving the passcode and that the defendant gave the passcode voluntarily and without any coercion whatsoever. *See Exhibit 4, Arrest Video 1, gov't bates no 94.* Thus, any argument about suppressing the passcode statement would be without legal or factual merit.¹

B. An Evidentiary Hearing is Unwarranted.

Based on the attached exhibits, an evidentiary hearing would not be necessary here to resolve disputed issues of material fact. The defendant does not appear to be disputing the accuracy of the Video Interview or other exhibits attached to this response. Thus, the Court can view and rely on these exhibits as an undisputed recitation of events. *See Exhibits 1-5. See also Declaration of Andrew Cabral and Exhibits A-D.*

A defendant is not entitled to an evidentiary hearing as a matter of right. Here, it appears that there are no disputed material issues of fact that would require the testimony of witnesses at an evidentiary hearing. Defendant's unsupported general assertions about his disabilities are insufficient to create

¹ Moreover, even if there were a colorable suppression argument, the contents of the cell phone should not be suppressed in this case. As evident in the short arrest video (Exhibit 4), the conditions surrounding the defendant's post-Miranda passcode statement do not demonstrate the kind of psychological or physical duress needed to show involuntariness. *See, e.g., United States v. Hernandez*, 2018 WL 3862017, at *3-5 (S.D. Cal. Aug. 13, 2018) (citing *United States v. Gonzalez-Sandoval*, 894 F.2d 1043, 1048 (9th Cir. 1990)).

contested issues of fact on voluntariness.² Moreover, defendant does not appear to be challenging the uncontradicted evidence or any credibility issues relevant to the suppression issues that he raises.³

II. BACKGROUND

On March 15, 2020, the defendant, Lyle Rikio Cummings, was arrested by the Maui Police Department (MPD) after engaging in an attempt to coerce and induce a 13-year-old minor to engage in sexual activity with him. ECF No. 1. Unbeknownst to Cummings at the time of his arrest, he was part of an online

² See *United States v. Howell*, 231 F.3d 615, 620 (9th Cir. 2000) (“An evidentiary hearing on a motion to suppress need be held only when the moving papers allege facts with sufficient definiteness, clarity, and specificity to enable the trial court to conclude that contested issues of fact exist.”) (citing *United States v. Walczak*, 783 F.2d 852, 857 (9th Cir. 1986), *United States v. Harris*, 914 F.2d 927, 933 (7th Cir. 1990), *United States v. Irwin*, 612 F.2d 1182, 1187 n.14 (9th Cir. 1980), and *United States v. Carrion*, 463 F.2d 704, 706 (9th Cir. 1972)); *United States v. Wardlow*, 951 F.2d 1115, 1116 (9th Cir. 1991) (the broad declaration of defense counsel asserting that the defense motion’s statement of facts was based upon discovery, rather than a declaration from an individual competent to testify, was not sufficient to require the granting of an evidentiary hearing); *United States v. Marcello*, 731 F.2d 1354, 1358 (9th Cir. 1984) (“[T]o mandate an evidentiary hearing, the challenger’s attack must be more than conclusory and must be supported by more than a desire to cross-examine.”).

³ *United States v. Woodson*, No. CR 11-00531 WHA, 2011 WL 5884913, at *6 (N.D. Cal. Nov. 23, 2011) (denying a defense request for an evidentiary hearing because “mere refusal to accept the uncontradicted evidence does not create a material issue of fact”); *United States v. Walker*, 239 F. Supp. 3d 738, 739 (S.D.N.Y. 2017) (“While [an evidentiary hearing] might have been warranted if there were important credibility issues that could not be addressed from the paper record, the defendant has made no showing that that is the case here.”); *United States v. Martinez*, 992 F. Supp. 2d 322, 325–26 (S.D.N.Y. 2014) (“A defendant is not entitled to an evidentiary hearing in connection with a motion to suppress unless he can show that there are ‘contested issues of fact going to the validity of the search’ ” and in the absence of an affidavit “by someone with personal knowledge that disputed facts exist” an evidentiary hearing is unnecessary) (citations omitted).

undercover operation where law enforcement posed as a 13-year-old girl. *Id.* On March 13-15, 2020, using an online communications platform as well as text messaging, Cummings traded a series of messages with the undercover officer. In the chats, among other things, Cummings offered to take who he believed was the young girl shopping, sent her photographs of cash, offered her marijuana, and discussed engaging in sexual activity with her. Before and after his arrest, investigators sought to identify the online chatter and connect the arrested Cummings to the online activity with the undercover officer.

Cummings was arrested outside his vehicle when he drove to meet the fictitious minor. *Id.* MPD arrested Cummings after he drove a vehicle to a designated location in or around Kihei, Maui to meet the fictitious minor. *Id.* At around 8:00 p.m. on March 15, 2020, upon his arrest, and outside of his vehicle, Cummings was handcuffed and verbally Mirandized by a law enforcement officer, MPD Detective Oran Satterfield. This arrest is captured on videos in Exhibits 4 and 5.

Cummings was then taken to the Kihei Police Station. At the Police Station, on or around 8:30 p.m., Cummings was interviewed on video by two law enforcement officers, MPD Officer LeeAnn Galario-Guzman and Homeland Security Investigations Agent Laura Dai. *See* Exhibit 1 (Video Recording). At

that time, prior to the commencement of the interview, Cummings was presented with and signed a waiver of rights form, MPD form 103 #1. *See* Exhibit 3.

Maui County charged Cummings with the enticement activity shortly after his arrest in March 2020. Specifically, he was charged with Electronic Enticement of a Child in the First Degree, in violation of Hawaii Revised Statutes 707-756. Cummings was then charged in a two-count federal criminal complaint on June 18, 2021, with enticement of a minor, in violation of 18 U.S.C. § 3422(b), and the possession and distribution of controlled substances, in violation of 21 U.S.C. § 841(b)(1)(C). On March 24, 2022, he was indicted by a grand jury on the same two charges.

III. GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS STATEMENTS

A. Legal Summary

A suspect must be given *Miranda* warnings prior to custodial interrogation to protect the right against self-incrimination guaranteed by the Fifth Amendment. *Miranda v. Arizona*, 384 U.S. 436 (1966). There is no disputed issue on this point in this case. Defendant was given clear Miranda warnings verbally at his arrest and then presented with them again during his post-arrest interview at the Kihei Police Station where he voluntarily signed a waiver of rights form.

As to voluntariness, it is the government's burden to prove by a preponderance of the evidence that a criminal defendant's statement was voluntary. *United States v. Tingle*, 658 F.2d 1332, 1335 (9th Cir. 1981). Under the Fifth Amendment, a suspect has the right to remain silent and choose to speak only of his own free will. *Malloy v. Hogan*, 378 U.S. 1, 8 (1964). A statement made as a result of physical intimidation or psychological pressure is considered involuntary. *Townsend v. Sain*, 372 U.S. 293 (1963).⁴ Defendant provides no basis to suppress his voluntary post-arrest and post-Miranda statements in this case.

First, the defendant suggests that statements he made to law enforcement should be suppressed because he is a “disabled American[]” and “suffers notably from comprehension problems, inexperience in legal matters, and has diagnosed psycho-social disabilities that are exhibited in being easily persuaded and not wanting to trigger displeasure or hostility, especially from strangers or those in authority. Federal and State officers are trained to be aware of this and not take

⁴ “The due process test takes into consideration the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation.” *Dickerson v. United States*, 530 U.S. 428, 434, (2000). These details include “duration and conditions of detention … the manifest attitude of the police toward [him], [his] physical and mental state, the diverse pressures which sap or sustain [his] powers of resistance and self-control—is relevant.” *Culombe v. Connecticut*, 367 U.S. 568, 602 (1961).

advantage of this or exert their authority in a manner designed to deny disabled Americans their constitutional rights.” Motion at p.3. The government views this essentially as a voluntariness challenge. The defendant raises these issues about his purported mental state for the first time in his motion. He has provided no evidence of any such disability and cites to no case law supporting this argument. Further, the unchallenged accuracy of the videos of the defendant during the arrest and the Video Interview do not suggest any obvious or apparent disability or comprehension problem that would support the defendant’s argument or undermine the knowing and voluntary nature of the defendant’s post-Miranda statements. *See* Exhibits 1, 4, and 5. Upon review, these three videos also show that law enforcement did not engage in any kind of coercion or unduly persuasive tactics during the course of their interactions with the defendant. *See id.* Thus, the defendant’s unsupported blanket assertions surrounding the defendant’s psychological conditions, such that he is “easily persuaded” and is inexperienced in legal matters, do not warrant suppression of his statements to law enforcement.⁵

The voluntariness inquiry is based on the totality of the circumstances. Defendant does not raise any other matter that would demonstrate undue coercion,

⁵ Defendant cites to Rule 47 of the Federal Rule of Criminal Procedure. The government presumes this is a typographical error and that the defense meant to refer to Rule 41 of the Federal Rules of Criminal Procedure. However, the relevant inquiry here is the Fifth Amendment of the U.S. Constitution. Defendant also cites to Hawaii law, which is not relevant here.

physical intimidation, or psychological pressure placed on him by law enforcement. The exhibits attached to this response, particularly the arrest videos and the Video Interview, show law enforcement engaged with the defendant in a calm, clear, and professional manner. The timing here also reflects voluntariness. The defendant's statements at the Kihei Police Station were provided within approximately one hour of his arrest and the interview lasted only approximately twenty minutes. Further, as discussed below in this response, when the Defendant requested medication from his vehicle, law enforcement made efforts to obtain that medication for him.

Second, the defendant argues that, while being interviewed by law enforcement on the date of his arrest as depicted in the Video Interview, he asked to talk to a lawyer, but law enforcement nevertheless improperly continued with the interview. Motion p. 3. Indeed, approximately halfway through the twenty-minute Video Interview, starting at approximately 9 minutes and 45 seconds, MPD Officer LeeAnn Galario-Guzman and the defendant discuss as follows:

LAGG: Okay. Are you willing to do...um...polygraph exam, if we are able to do it today?

LC: Uh...

LAGG: A lie detector test?

LC: ...(UI) I like talk to my lawyer.

LAGG: You like talk to your attorney? Okay. Alright. And you like talk to your lawyer because of the polygraph?

LC: Yeah.

LAGG: You fine talking with us still or you...you want to talk to your attorney already?

LC: Depends on the questions.

LAGG: Okay. So you're still willing for speak with us?

LC: Yeah.

LAGG: Okay.

LD: Okay.

Exhibit 1; *see also* Exhibit 2 (transcript at p.11) After that clarification colloquy, law enforcement continues with the interview and asks the defendant questions to which he continues to respond without asking for an attorney for the remainder of the interview. *Id.*

The Video Interview speaks for itself and there are no disputed issues of fact for an evidentiary hearing on this point.⁶ In the recording and the supporting transcript, it is clear that the defendant was asking to talk to a lawyer *only* about the polygraph. And law enforcement was diligent and careful to clarify that his request for a lawyer was only in connection with his decision about the polygraph. Defendant expressly stated that his request for a lawyer was only about the polygraph. Law enforcement then asked him more than once if he was willing to continue talking to them without a lawyer.

⁶ The defense might argue that the Defendant could testify at an evidentiary hearing on this issue regarding what was in his mind (e.g. whether he really meant what he said when he told law enforcement that his request for a lawyer only had to do with the polygraph issue). But law enforcement cannot be expected to guess what's in a Defendant's mind if he plainly states that he is willing to talk to them, as was the case here. A defendant cannot state to law enforcement that he/she is willing to talk and then suppress statements by arguing that he/she was thinking something other than what he/she actually communicated to law enforcement.

The defendant's request for a lawyer to discuss the polygraph issue and explanation that he said whether he would ask for a lawyer depended on the questions asked by law enforcement, underscores that he was perfectly aware of his right to not answer questions and to request counsel should he want it. He decided which questions to answer and which not to answer, as evidenced by the fact that he decided not to answer the polygraph question or consent to a polygraph. Law enforcement did not continue to press him at all about the polygraph issue and respected his request for a lawyer on that point. He then voluntarily answered the remainder of the questions.

Third, the defendant argues that he indicated that he was not willing to talk to law enforcement on an MPD waiver of rights "103" form. Motion p. 4. Although true, the defendant confuses the relevant documents in this case. The form identified by the defendant in his motion, MPD form 103 #2, is entirely irrelevant to any statements that the defendant made to law enforcement in this case. The government has provided exhibits attached to this response (e.g., two arrest videos and the Video Interview), the Declaration of former MPD Sergeant Andrew Cabral, and supporting documents to further clarify the context and use of MPD waiver of rights forms, including MPD form 103 #2. *See Declaration, Exhibit A.*

At the beginning of the Video Interview at the Kihei Police Station on March 15, 2020, as shown on the video, law enforcement again tells the defendant that he is not obligated to speak to them and that it is up to him to decide if he wants to speak to them. *Id.* The Video Interview shows that Officer LeeAnn Galario-Guzman handed him an MPD waiver of rights 103 form, which listed his various post-arrest Miranda rights. *Id.* Officer Galario-Guzman then read his rights to him out loud and the defendant put his initials next to each right. *Id.* The waiver form also contains the following question: “Would you like to waive your rights and speak with me now:” Exhibit 3 (MPD 103 form #1). Defendant initialed “YES” in response to that question. *Id.* The time next to the defendant’s signature on that form is correctly listed as “8:38 p.m.” and the date is correctly listed as March 15, 2020, which coincides with the video recording. *Id.*

It is evident that Exhibit 3, signed at 8:38 p.m., is indeed the form that the defendant initialed and signed during the video interview because the interviewer states at the beginning of the video that the interview began at 8:35 p.m. on March 15, 2020, and the defendant can be seen signing the form shortly after the interview begins. *See Exhibit 1(Video Interview).* As the defendant is reviewing the form on the video, Officer Galario-Guzman also verbally explains to him that he can decline to speak with her and the HSI agent who was present and that he could leave with other officers. *Id.* Defendant then verbally responds “yeah,”

when asked if he wants to speak with the officer. *Id.* The interview lasts approximately 20 minutes. *Id.* The officer notes on the video that the interview ends at 8:57 p.m. *Id.*

Later that same evening, after his interview and prior to being moved to another MPD facility, the defendant asked law enforcement for access to his medication that was located in his vehicle. *See Declaration of Andrew Cabral* (also referred to as the “Declaration”).⁷ While at the Kihei Police Station, as part of the plan to escort the defendant to his truck to obtain his medication, the defendant was once again advised of his constitutional rights by using a second MPD waiver of rights 103 form. Declaration, Exhibit A (MPD 103 form, gov’t bates #48 (MPD 103 form #2)). On the MPD 103 form #2, the defendant initialed and signed it, and wrote the accurate time of his signature of 10:11 p.m. on March 15, 2020. *Id.* Because this form was only for purposes of obtaining his medication and not for the purpose of giving statements to law enforcement, the defendant circled “NO,” indicating that he was not willing to speak to law enforcement while obtaining his medication. *Id.* Defendant also signed a Consent to Search form in connection with obtaining his medication from his truck. *See Declaration, Exhibit*

⁷ Defendant’s vehicle had been impounded at the Kihei Police Station after the defendant’s arrest. *Id.* Defendant informed officers that his medication was located in an orange bag inside the vehicle (a truck) that he drove earlier that day to meet up with what he believed was a 13-year-old for sex. *Id.*

C (MPD Form #113, gov't bates #44). Defendant signed this form on March 15, 2020 at 10:14 p.m. *Id.* Also attached for reference is a list of items recovered from the search of Defendant's truck, including his medications. Declaration, Exhibit D (gov't bates #46). The report MPD Officer Cabral created at or around the time of events corroborates this timeline and these documents to demonstrate that the 10:11 p.m. MPD 103 form #2 was not connected to any statements of the defendant in this case. *See* Declaration, Exhibit B (gov't bates #223). Thus, the form that defense relies on in his Motion to Suppress (MPD form 103 #2) is irrelevant to any of the statements that he seeks to suppress. That form relates only to obtaining the defendant's medication and was signed well after the completion of his arrest and interview on March 15, 2020. Therefore, the government respectfully requests that the defendant's motion to suppress statements be denied.

DATED: April 14, 2023, at Honolulu, Hawaii.

Respectfully Submitted,

CLARE E. CONNORS
United States Attorney
District of Hawaii

By Christine Olson
Christine Olson
REBECCA A. PERLMUTTER
Assistant U.S. Attorneys

Attorneys for Plaintiff
UNITED STATES OF AMERICA

CERTIFICATE OF SERVICE

I hereby certify that, on the dates and by the methods of service noted below, a true and correct copy of the foregoing was served on the following via email:

JOSEPH R. MOTTL, III

Counsel for defendant Lyle Rikio Cummings

DATED: April 14, 2023, at Honolulu, Hawaii.

/s/ Christine Olson

United States Attorney's Office
District of Hawaii

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EXHIBIT 1

Video – Interview 2.avi

Case 1:22-cr-00023-DKW Document 75-2 Filed 04/17/23 Page 1 of 21 PageID.280
SUSPECT: LYLE RIKIO CUMMINGS
DATE: March 15, 2020 **Case Number: HL07QS20HL0007**

INTERVIEW OF LYLE RIKIO CUMMINGS

The following was transcribed by Homeland Security Investigations (HSI) Special Agent (SA) Special Agent (SA) Murray Acosta from October 2-6, 2020. The transcript describes an audio/visual recording interview of Lyle Rikio CUMMINGS at the Maui Police Department, Kihei Substation which took place on March 15, 2020.

Legend:

LAGG: Maui Police Department, Detective Lee Ann Galario-Guzman
LC: Lyle Rikio CUMMINGS
LD: HSI SA Laura Dai
IA: Inaudible
UI: Unintelligible

(Video Camera Activated)

(LD presents her badge and credentials for LC to observe and inspect.)

LD: I'm a Special Agent with Homeland Security [Investigations]. We're working together.

(LC affirmatively nods his head.)

Yeah. Yeah.

LAGG: Okay. So...um...before I ask questions, we're going to read you your rights and then...(UI) it's up to you if you want to say anything or not. Okay? But...um... let me start with this okay.

(LAGG presents MAUI POLICE DEPARTMENT, YOUR CONSTITUTIONAL RIGHTS form to LC.)

Okay, so...today's date is March 15, 2020. The time now is 8:36 p.m. We're in the Kihei Police Station, in interview room number two. Um...state your full name.

LC: Lyle R. Cumming'...Rikio Cummings.

LAGG: Ly'...Lyle...

LC: Rikio Cummings.

LAGG: Rikio...?

M. ACOSTA

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000081

CUMMINGS_000764

Case 1:22-cr-00023-DKW Document 75-2 Filed 04/17/23 Page 2 of 21 PageID.281
SUSPECT: LYLE RIKIO CUMMINGS
DATE: March 15, 2020 **Case Number: HL07QS20HL0007**

(LC affirmatively nods his head.)

Okay. Okay...uh...this is for report number 20-010287. Um...regarding Electronic Enticement of a Child in the First Degree. Okay. Lyle, before we start, yeah, you can...um...write your full name over here on the top.

(LAGG hands LC a pen to write with. LC writes his name on the MAUI POLICE DEPARTMENT, YOUR CONSTITUTIONAL RIGHTS form.)

And then I going read this aloud to you, you just g'...follow with me. Yeah, after every sentence I like you initial...after I'm done reading the...the sentence. It's just so you understand it. Alright?

(LAGG reads from the MAUI POLICE DEPARTMENT, YOUR CONSTITUTIONAL RIGHTS form.)

"Before we ask you any questions, we want to tell you about your rights." So if you understand that, can you initial.

(LC writes his initial.)

Uh... "You have the right to remain silent." You understand? You understand that?

(LC writes his initial.)

LC: Yes.

LAGG: Okay, "Anything you say can be used against you in court."

LC: Yes.

(LC writes his initial.)

LAGG: You understand? Okay. "You have the right to talk to a lawyer for advice before we ask you any questions and to have your lawyer with you during questioning." You understand?

LC: Yeah.

(LC writes his initial.)

LAGG: Okay...um..."If you cannot afford a lawyer one will be appointed for you before any questioning." You understand?

LC: Yes.

M. ACOSTA

Page 2 of 21

000082

CUMMINGS_000765

Case 1:22-cr-00023-DKW Document 75-2 Filed 04/17/23 Page 3 of 21 PageID.282

SUSPECT: LYLE RIKIO CUMMINGS

DATE: March 15, 2020

Case Number: HL07QS20HL0007

(LC writes his initial.)

LAGG: Okay. Initial please. Okay...so...we'll ask you...skip that part and just like you read this one out loud. And if you understand it sign, today's date, and time.

LC: "I understand the English language. I have read and heard this statement of my rights and I understand what my rights are."

LAGG: You understand, yeah, what just read?

LC: Yeah.

LAGG: Okay. Just sign

(LC signs his name.)

Today's date is March 15, 2020.

(LC writes the date.)

Right now it's 8:38 p.m.

(LC writes the time.)

Okay and the next line is "Would you like to waive your rights and speak with me now?" So...like I...like how you...right now is...if you want to speak with us and then later on say you don't to speak with us, that's fine. We'll end the conversation and...and you get...um...taken with the officers out there.

LC: Okay.

LAGG: You want to speak with me?

LC: Yeah.

LAGG: Okay.

(LC writes his initials on the line corresponding with the word "Yes" indicating that he wished to speak with law enforcement. LC then hands the RIGHTS form to LAGG.)

(LAGG signs her name on the "Warnings given by" section on the form and writes the date and time.)

M. ACOSTA

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CUMMINGS_000766

Case 1:22-cr-00023-DKW Document 75-2 Filed 04/17/23 Page 4 of 21 PageID.283

SUSPECT: LYLE RIKIO CUMMINGS

DATE: March 15, 2020

Case Number: HL07QS20HL0007

Okay, Lyle, so...tonight...um...

(LD signs her name on the "Witness" section on the form and writes the date and time.)

You know why you're here?

LC: Yes.

LAGG: Okay. Why...why you're here?

LC: Because I was...on the phone with one...supposedly, one young girl.

LAGG: Okay. How young did this girl say she was, the person you was on the phone with?

LC: On the phone said eighteen.

LAGG: You sure she said eighteen?

LC: On the phone it said eighteen.

LAGG: What phone...what phone like...what are you talking about?

LC: Get...get their name and age on the top.

LAGG: Okay you were on...what...your...your regular phone or some kind of social media site?

LC: Yeah, one site.

LAGG: Okay, what site was this?

LC: Skout.

LAGG: You was on Skout? So on Skout she said she was eighteen?

LC: It had it on top...eighteen.

LAGG: Did she talk to you in any other format? Did she continue to talk to you on Skout or...did she talk to you in any other way?

LC: (UI.)

LAGG: Did she send you messages? You sent her messages?

M. ACOSTA

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CUMMINGS_000767

Case 1:22-cr-00023-DKW Document 75-2 Filed 04/17/23 Page 5 of 21 PageID.284

SUSPECT: LYLE RIKIO CUMMINGS

DATE: March 15, 2020

Case Number: HL07QS20HL0007

LC: We both sent back and forth.

LAGG: Okay.

LC: Then she gave me her number.

LAGG: Okay, so you got her number?

LC: She gave me her number.

LAGG: Okay.

LC: Text her.

LAGG: Okay, so you were texting her?

LC: Yup. (Affirmative.)

LAGG: Okay, and so what was the conversation then?

LC: Um... "What you like do?" and I...was, "Whatever. If you like hang out."

LAGG: Okay. Okay, so...um...what else was said in that conversation?

LC: She kept asking what I like do? What I like do? I said, "I don't know. If you like hang out, we can hang out."

LAGG: Okay, did she at any time mention how old she was during those conversations?

LC: Uh...she mentioned her cousin was seventeen.

LAGG: Her cousin was seventeen. What about her? Did she mention how old she was?

LC: Um...no. (Negatively shakes his head.)

LAGG: Okay, so...not at any time did sh'...you...you sure she never mention her age because...um...

LC: I think she said...she going be...she was fourteen or something.

LAGG: Fourteen? Okay, she said she was going to turn fourteen, I think, yeah? She was going turn fourteen next month. But if I understand correctly, from the messages.

M. ACOSTA

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CUMMINGS_000768

Case 1:22-cr-00023-DKW Document 75-2 Filed 04/17/23 Page 6 of 21 PageID.285

SUSPECT: LYLE RIKIO CUMMINGS

DATE: March 15, 2020

Case Number: HL07QS20HL0007

LC: I think so.

LAGG: Okay. So you know sh'...you know, at that point, she was...around thirteen or fourteen?

LC: (UI) she was young.

LAGG: Yeah. And you continue conversation?

LC: Um...she kept asking, oh, if I, "What you like do? What you like do?"

LAGG: Mm-hmm. (Affirmative.)

LC: I was like, "Oh, whatever, if you like hang out." 'Cause she was having problems with her cousin or something she said.

LAGG: Okay. And...you remember what else was said?

LC: Mmmm. (Pondering.) (UI) cruise with you if you like.

LAGG: Okay. And was there any conversation of wanting to...um...participate in any type of sexual...

LC: At one point...

LAGG: ...contact?

LC: ...she kept going and going, I just wen'...say I would do something.

LD: Okay.

LAGG: Remember what you said?

LC: Yeah.

LAGG: What was that you said on text?

LC: "I'll eat your pussy."

LAGG: Okay, you told her that on text messaging?

LC: Yes.

LAGG: Okay, and...did the conversation continue? You remember what else you said?

M. ACOSTA

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CUMMINGS_000769

Case 1:22-cr-00023-DKW Document 75-2 Filed 04/17/23 Page 7 of 21 PageID.286
SUSPECT: LYLE RIKIO CUMMINGS
DATE: March 15, 2020 **Case Number: HL07QS20HL0007**

LC: Umm. (Negatively shakes his head.) That's about it.

LAGG: That's about it.

LC: (UI) but...I just...I wasn't in for that...I just wanted for cruise.

LAGG: Okay, so you remember telling her that you were wanting to be in a relationship with her?

LC: No.

LAGG: And you were going to treat her to whatever she wants?

LC: Yes.

LAGG: Bring her to...

LC: (UI.)

LAGG: Mm-hmm. (Affirmative.) You remember that conversation?

LC: Yes.

LAGG: Okay. Um...also you remember...uh...asking her...um...wanting to sh'...telling her that you would...you would shower her with money?

LC: She wanted me to shower her with money, she said.

LAGG: Okay. And you said you was going to bring down some money...for her, in the conversation you guys...text conversation you guys had?

LC: I said, I would have money with me.

LAGG: You said you would have money with you. Did you bring money with you...

LC: (Shrugs his shoulders.)

LAGG: ...to give to her?

LC: No, I guess...well, what I carry with me.

LAGG: What you usually carry with you?

LC: I have a few hundred.

M. ACOSTA

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CUMMINGS_000770

Case 1:22-cr-00023-DKW Document 75-2 Filed 04/17/23 Page 8 of 21 PageID.287

SUSPECT: LYLE RIKIO CUMMINGS

DATE: March 15, 2020

Case Number: HL07QS20HL0007

LAGG: A few hundred. What is a "...few..." like...?

LC: Three hundred.

LAGG: Three hundred. That's all you...you have?

LC: Uh...uh...I had...uh...I just got paid so I had...(UI) had my paycheck with me.

LAGG: How much you usually get paid?

LC: I had eleven hundred.

LAGG: Okay. So you had eleven hundred i'...on you?

LC: No. (Negatively shakes his head.) I did not.

LAGG: You just had three hundred from the eleven hundred?

LC: I had...I had a little more...I had more than three hundred. I not sure exactly.

LAGG: Okay. So you have around three hundred? A little bit more or a little bit less?

LC: Maybe five...five...five hundred or something.

LAGG: Um...do you do this often?

LC: I...I go on the website for...but I never did go to (UI).

LAGG: Okay, you ever go...um...on any other sites...besides *Skout*?

LC: I have like *MeetMe* but I never do...I don't go on that.

LAGG: Okay. So you have a *MeetMe* account?

LC: I...uh...it's same as...it's same as *Skout*, I believe.

LAGG: Same as *Skout*? Okay. So you have a *Skout* accout, *MeetMe* account. Any others?

LC: *Snapchat*.

LAGG: *Snapchat*.

M. ACOSTA

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CUMMINGS_000771

Case 1:22-cr-00023-DKW Document 75-2 Filed 04/17/23 Page 9 of 21 PageID.288

SUSPECT: LYLE RIKIO CUMMINGS

DATE: March 15, 2020

Case Number: HL07QS20HL0007

LC: *Instagram.*

LAGG: Okay.

LC: *Facebook.*

LAGG: Okay.

LC: I don't know if *TikTok* is one of those whatever.

LAGG: Okay. Have you ever...um...been involved in any other...um...in other relationships with any of the other people you chat with?

LC: Oh, I usually before (UI) Vegas (UI).

LAGG: And what is this...through just text messaging or you...

LC: Hmm. (Ponders.)

LAGG: 'Cause certain parts of Vegas is legal, right, for...outside of Vegas...um...actually in Nevada...

LC: Yeah.

LAGG: ...right? Okay, so...

LC: (UI) for meet people.

LAGG: "...for meet people." Okay...um...let me...this ques'...let me read...read this question and...: Anybody under the age of sixteen?

LC: (Negatively shakes his head.)

LAGG: You ever been involved with...any...

LC: No.

LAGG: ...female under the age of sixteen?

LC: No.

LAGG: Okay. So you saying that this is your first time?

LC: I wasn't involved with her?

LAGG: Involved with who?

M. ACOSTA

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CUMMINGS_000772

Case 1:22-cr-00023-DKW Document 75-2 Filed 04/17/23 Page 10 of 21 PageID.289

SUSPECT: LYLE RIKIO CUMMINGS

DATE: March 15, 2020

Case Number: HL07QS20HL0007

LC: This girl.

LAGG: Okay. No but (UI) are you...were you involved with anybody else under the age of sixteen...

LC: No. (Negatively shakes his head.)

LAGG: ...besides today?

LC: No. (Negatively shakes his head.)

LAGG: And d'...do you take medication for anything?

LC: Yeah.

LAGG: What you take medication for?

LC: High blood pressure, diabetes...

LAGG: Mm-hmm. (Affirmative.)

LC: ...all kind.

LAGG: Okay. And you took your medication already tonight?

LC: I take it every morning.

LAGG: (UI) every morning. Where is that medication now?

LC: At home.

LAGG: So the medication that you going need?

LC: (IA.)

LAGG: You take it every morning: your blood pressure and diabetes.

LC: (UI.)

LAGG: Okay. Um...other than that, you...you do any other type of drugs or you...you took any other type of drugs?

LC: Marijuana.

M. ACOSTA

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CUMMINGS_000773

Case 1:22-cr-00023-DKW Document 75-2 Filed 04/17/23 Page 11 of 21 PageID.290

SUSPECT: LYLE RIKIO CUMMINGS

DATE: March 15, 2020

Case Number: HL07QS20HL0007

LAGG: Marijuana. Guess when...how long ago was it?

LC: Hmm. (Ponders.) Like six o'clock this evening...

LAGG: Okay.

LC: ...after dinner.

LAGG: Okay. But it's not going to prevent you from like... speaking with us or...you know, making sound decisions right?

LC: It shouldn't. (Negatively shakes his head.)

LAGG: Okay. Are you willing to do...um...polygraph exam, if we are able to do it today?

LC: Uh...

LAGG: A lie detector test?

LC: ... (UI) I like talk to my lawyer.

LAGG: You like talk to your attorney? Okay. Alright. And you like talk to your lawyer because of the polygraph?

LC: Yeah.

LAGG: You fine talking with us still or you...you want to talk to your attorney already?

LC: Depends on the questions.

LAGG: Okay. So you're still willing for speak with us?

LC: Yeah.

LAGG: Okay.

LD: Okay.

LAGG: So y'...y'...you're telling us, this is the first time you've been involved with...conversation with an underage?

LC: Yes.

LAGG: Okay, you've never done this before?

M. ACOSTA

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CUMMINGS_000774

Case 1:22-cr-00023-DKW Document 75-2 Filed 04/17/23 Page 12 of 21 PageID.291
SUSPECT: LYLE RIKIO CUMMINGS
DATE: March 15, 2020 **Case Number: HL07QS20HL0007**

LC: No.

LAGG: Um...

LC: (Turns away and coughs.)

LAGG: ...so if we looked at your... your *Skout* account, would we be... would we find information where you're chatting with somebody under the age... would it show that... any other people besides who you spoke with today?

LC: (UI) if it's (UI) I just put in... I just... I put anything on *Skout*.

LAGG: Okay. (UI).

LC: (UI).

LAGG: (UI.) And so... the person that you speaking with tonight... before you got here, what was her name?

LC: Uh... Kiana (phonetic) I believe.

LAGG: Kiana.

LC: (UI) on top there.

LAGG: That's what said on the... on the account.

LC: Yes.

LAGG: Okay.

(Brief pause.)

(To LD.) (IA.)

LD: Um... I do have some questions regarding... um... your chat with Kiana, earlier. Um... if you can refresh your memory. At one point, earlier, you said that... um... you were going to... she asked you to shower her with money.

LC: Mm-hmm. (Affirmative.)

LD: How did that conversation came about?

M. ACOSTA

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CUMMINGS_000775

Case 1:22-cr-00023-DKW Document 75-2 Filed 04/17/23 Page 13 of 21 PageID.292

SUSPECT: LYLE RIKIO CUMMINGS

DATE: March 15, 2020

Case Number: HL07QS20HL0007

LC: She asked me...she said, oh, if I'm hustling 'cause I...I show a lot of money...oh, my pictures I get money.

LD: Mm-hmm. (Affirmative.)

LC: 'Cause I put pictures of money.

LD: Okay, what else?

LC: What you mean, "What else?"

LD: Um...like, you were going to take her shopping and stuff. Wha'...tell me about that?

LC: I just told her, "If you like go hang out," I...I go take her shopping.

LD: Mm-hmm. Mm-hmm. (Affirmative.) What was your intent to take her to shopping?

LC: Make her feel good.

LD: Mm-hmm. (Affirmative.) Were you planning to buy her stuff?

LC: Umm...I'm not sure.

LD: Or was it just like...talking about it?

LC: (UI) talk.

LD: Mm. (Affirmative.) Did you have plan to take her to Wailea or anywhere to shop...and buy her stuff?

LC: No.

LD: Mmm, okay.

LAGG: 'Cause in your text conversation I believe it says that you will shower her with gifts.

LC: Not, I said I would (UI) her go.

LAGG: (UI.)

LD: Mm-hmm. Mm-hmm. (Affirmative.)

M. ACOSTA

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CUMMINGS_000776

Case 1:22-cr-00023-DKW Document 75-2 Filed 04/17/23 Page 14 of 21 PageID.293
SUSPECT: LYLE RIKIO CUMMINGS
DATE: March 15, 2020 **Case Number: HL07QS20HL0007**

LAGG: (UI) but... I'm saying that "...if you want to be my girlfriend..." and then she's saying, "What do you want? What do you want?" and you ask her what she wanted?

LC: Right.

LAGG: Yeah, so you're trying to initiate a relationship with Ki'... Kiana?

LC: No.

LAGG: No? Just (UI) to hook up?

LC: Just hang out. She said like she needed... she was in trouble... like she... she... I don't know. Nowadays, kids they get in trouble sometimes they need somebody just for talk to.

LD: Mm-hmm. (Affirmative.)

LC: It seems like she kind of in that situation?

LD: Mm-hmm. (Affirmative.) Are you in any relationship with anyone that... right now?

LC: Yes, I am.

LD: Okay, are you married?

LC: No.

LD: Okay, you have a girlfriend?

LC: Yes.

LD: Okay, you mind sharing her name?

LC: Vienna. (Phonetic.)

LD: Vien'... how old is Vienna?

LC: She's thirty-seven.

LD: Mm-hmm. (Affirmative.) Does she know that you...

LC: (Negatively shakes his head.)

LD: ...came out? Okay. Are you living with... with her... right now?

M. ACOSTA

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CUMMINGS_000777

Case 1:22-cr-00023-DKW Document 75-2 Filed 04/17/23 Page 15 of 21 PageID.294
SUSPECT: LYLE RIKIO CUMMINGS
DATE: March 15, 2020 **Case Number: HL07QS20HL0007**

LC: I kind of stay with her.

LD: Okay, where does she live?

LC: On South Kihei Road.

LD: South Kihei Road. Oh, okay. You said she's about thirty-six years old?

LC: Thirty-six. Thirty-seven. Ten...

LD: Thirty-six...

LC: ...years younger.

LD: ...thirty-seven. What's Vienna's last name?

LC: Ki'...Kihana...Kihana...Kihana

LD: Kihana.

LC: (UI.)

LD: Okay. Does she work?

LC: Yes.

LD: Where does she work?

LC: *Three's Bar & Grill.*

LAGG: *Three's Bar & Grill.*

LD: Oh, okay.

LAGG: The number three.

LD: Okay, sorry I'm not familiar with...

LAGG: No. No. No, I'm familiar with the area.

LD: You have any children?

LC: No.

LD: No. Anyone else you have a relationship with besides your girlfriend?

M. ACOSTA

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CUMMINGS_000778

Case 1:22-cr-00023-DKW Document 75-2 Filed 04/17/23 Page 16 of 21 PageID.295

SUSPECT: LYLE RIKIO CUMMINGS

DATE: March 15, 2020

Case Number: HL07QS20HL0007

LC: No.

LD: Hmm. (Ponders.) How long have you been with Vienna?

LC: Umm...maybe two...three years?

LD: Two to three years. Um...tell me something about her. What do you guys normally do?

LC: Oh, she works late hours so...I usually just sleep over and then go work and then we go have dinner (UI).

LD: Mm-hmm. Mm-hmm. (Affirmative.) Okay. I'm trying to take you back to when you were talking to Kiana. You mentioned that she asked you to shower her with money, right?

LC: She asked me, yeah.

LD: Yeah, she asked you. How do you respond to that?

LC: See I don't remember?

LD: Mm...okay, what I'm trying to...to have you...when you met up with Vienna, is she the type that also wanted you to shower with...with money as well or...?

LC: No.

LD: No.

LC: She don't ask me for that.

LD: Okay. Any'...anybody else that...ask you...or you attempt to offer any kind of money to them for any kind of sexual relationship?

LC: No.

LD: No. Okay. (To LAGG.) Alright.

LAGG: Hey, Lyle, just a few...um...information. "Lyle," yeah, is your...Lyle Cummings?

LC: Yes.

LAGG: Yeah. Your birthdate, Lyle?

M. ACOSTA

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CUMMINGS_000779

Case 1:22-cr-00023-DKW Document 75-2 Filed 04/17/23 Page 17 of 21 PageID.296
SUSPECT: LYLE RIKIO CUMMINGS
DATE: March 15, 2020 **Case Number: HL07QS20HL0007**

LC: 8-9-73.

LAGG: And your Social Security Number.

LC: 576-78-1312.

LAGG: And your home address? Where you live?

LC: 24 Nena.

LAGG: Elena?

LC: Nena.

LAGG: Nena.

LC: N-e-n-a.

LAGG: Okay. Uh... Haliimaile?

LC: Yes.

LAGG: Okay. Um... where do you work at?

LC: Um...(UI) in Kihei.

LAGG: Um... what do you do for them?

LC: T.M.O.

LAGG: What is that?

LC: Tractor Motor Operator.

LAGG: Tractor Motor Operator.

LC: Parts Department.

LAGG: Okay. You have any other number you can be reached at?

LC: No. Well, my home number but that phone not that good.

LAGG: Okay, what is...what is the home phone number 'cause we...what happens is...um...you never get consent to search for your truck so we're going to apply for a search warrant and your phone is in there, as well.

M. ACOSTA

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CUMMINGS_000780

Case 1:22-cr-00023-DKW Document 75-2 Filed 04/17/23 Page 18 of 21 PageID.297
SUSPECT: LYLE RIKIO CUMMINGS
DATE: March 15, 2020 **Case Number: HL07QS20HL0007**

LC: Mm-hmm. (Affirmative.)

LAGG: There is also an application for a search warrant on the phone. Okay. Um...what is the phone number for home?

LC: 8-0-8-5-7-2-7-5-8-3.

LAGG: Okay. And this is the...another way to get a hold of you?

LC: (IA.)

LAGG: You have another number we can get a hold of you?

LC: (IA.)

LAGG: No? Okay.

LD: What about your girlfriend?

LC: It's...

LD: You have her number?

LC: ... (UI) I don't have her number...on me (UI).

LAGG: (UI) your phone.

LD: It's on your phone?

LAGG: Okay.

LD: Okay. The phone that you were using, what number was it?

LC: 8-0-8-3-5-7-3-7-1-1

LD: Okay, who is this phone subscribed to? Are you the subscriber of this phone?

LC: Yes.

LD: Which services you have?

LC: Verizon.

M. ACOSTA

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CUMMINGS_000781

Case 1:22-cr-00023-DKW Document 75-2 Filed 04/17/23 Page 19 of 21 PageID.298

SUSPECT: LYLE RIKIO CUMMINGS

DATE: March 15, 2020

Case Number: HL07QS20HL0007

LD: Verizon. How long have you been using this particular number in...with Verizon?

LC: Oh, long time.

LD: Like...more than five years?

LC: Oh, yeah. (UI.)

LD: Less than five? One year?

LC: Maybe twenty years.

LD: Maybe five years.

LAGG: Twenty years.

LD: Twenty. Oh, okay.

LAGG: Okay.

LD: Anybody else have access to your phone? Are you the only person using it?

LC: Yeah.

LD: Okay. Is it password protected?

LC: With a number?

LD: Yeah, so a number.

LC: Mm-hmm. (Affirmative.)

LD: So it has a...a number (UI) iPhone...

LC: Mm-hmm. (Affirmative.)

LD: ...or...or...something like that. Okay.

LAGG: Yeah, what kind of phone do you have? .

LC: iPhone.

LAGG: What brand? iPhone 7?

M. ACOSTA

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CUMMINGS_000782

Case 1:22-cr-00023-DKW Document 75-2 Filed 04/17/23 Page 20 of 21 PageID.299

SUSPECT: LYLE RIKIO CUMMINGS

DATE: March 15, 2020

Case Number: HL07QS20HL0007

LC: (Affirmatively raises his eyebrows.)

LD: Okay. Have you given your password to anybody?

LC: The Detective.

LD: The Detective, okay. So...you've been using this iPhone – today is what? Sunday – what about the last five days?

LC: That's the only phone I got.

LD: Okay, so the phone have always been in your possession?

LC: Yes.

LD: Okay. Alright.

LAGG: Yeah.

LD: You have any question for me?

LAGG: Or for us?

LD: For us?

LC: (Negatively shakes his head.)

LAGG: Okay. Like...um...what I explained earlier, when I was reading you your rights, the charges, Electronic Enticement of a Child in the First Degree...okay...um...the investigation is still ongoing so...um...we're going to check if there are more charges and so it's a pending investigation; therefore...um...I know you trying to make a phone call right now because it's still pending – the investigation – but once we're...um...clear with the investigation, the detective will come see you to let you know you can make your phone call and/or give you the...your bail amount. Okay.

LC: (Affirmatively nods his head.)

LAGG: You have...

LC: (Negatively shakes his head.)

LAGG: ...any other questions for us? No?

LC: No. (Negatively shakes his head.)

M. ACOSTA

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CUMMINGS_000783

Case 1:22-cr-00023-DKW Document 75-2 Filed 04/17/23 Page 21 of 21 PageID.300
SUSPECT: LYLE RIKIO CUMMINGS
DATE: March 15, 2020 **Case Number: HL07QS20HL0007**

LAGG: Okay.

LD: Well, thank you for being cooperative with us. I appreciate you being honest and talking to us.

LC: (Affirmatively nods his head.)

LAGG: Okay, thank you, Lyle. End of interview at 2057 [hours].

LD: (UI.)

(LAGG and LD exit the interview room. LC remains in the interview room.)

(Video recorder is deactivated.)

M. ACOSTA

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CUMMINGS_000784

Case 1:22-cr-00023-DKW Document 75-3 Filed 04/17/23 Page 1 of 1 PageID.301

MAUI COUNTY POLICE DEPARTMENT

YOUR CONSTITUTIONAL RIGHTS

TO: Lyke Rikio Cummings POLICE REPORT NO.: 20-010287
 (Print or type name of person warned)

WARNING OF RIGHTS

Before we ask you any questions, we want to tell you about your rights. LC

You have the right to remain silent. LC

Anything you say can be used against you in court. LC

You have the right to talk to a lawyer for advice before we ask you any questions and to have your lawyer with you during questioning. LC

If you cannot afford a lawyer one will be appointed for you before any questioning. LC

(Additional Warnings to Juveniles)

You have the right to talk to your parents, guardians, or any other adult before you are asked any questions and to have any one of them present with you during questioning. _____

In certain instances, you may be subject to the same penalties and punishment as an adult. _____

I understand the English language. I have read and heard this statement of my rights and I understand what my rights are.

Signed Lyke R Cummings
 Date 3/15/20 Time 8:38pm

Would you like to waive your rights and speak with me now? YES LC NO _____

Warnings given by Lyke R Cummings Date 3/15/20 Time 2029 hrs
 Witness John Date 03-15-2020 Time 2039 hrs.

MPD Form No. 103 (9/2011)

EXHIBIT 3

000102

CUMMINGS_000029

Case 1:22-cr-00023-DKW Document 75-4 Filed 04/17/23 Page 1 of 1 PageID.302

EXHIBIT 4

Video – IMG_0036.MOV

Case 1:22-cr-00023-DKW Document 75-5 Filed 04/17/23 Page 1 of 1 PageID.303

EXHIBIT 5

Video – IMG_0037.MOV

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,) CR. NO. 22-00023 DKW
)
 Plaintiff,) DECLARATION OF ANDREW
) CABRAL JR.
 vs.)
)
 LYLE RIKIO CUMMINGS,)
)
 Defendant.)
)

DECLARATION OF ANDREW CABRAL JR.

I, the undersigned, Andrew Cabral Jr., declare that the following information is true and accurate to the best of my knowledge, under the penalties of perjury:

1. I, Andrew Cabral Jr., was a Police Sergeant with the Maui Police Department (MPD) from approximately April 01, 2020, until April 08, 2023. Generally, my duties included (but were not limited to) coordination/supervision of the Police Recruit Academy, conducting various training within the department, and ensuring training records within the department were maintained.

2. On March 15, 2020, I provided some support during an operation involving electronic enticement of minors. I was located at the Kihei Police Station that day during the times pertinent to this affidavit.

3. It is my understanding that on that same day, March 15th, 2020, an individual identified to be Lyle Rikio Cummings (hereinafter “Cummings”) was

arrested by law enforcement from the MPD in connection with that operation.

4. Following Cummings' arrest, it is my understanding that Cummings was transported to the Kihei Police Station located on Maui. Cummings' vehicle was impounded and also towed to the Kihei Police Station. While at the Kihei Police Station, and prior to being transported to the Wailuku Police Station, it is my understanding that Cummings informed law enforcement that he needed multiple medications for certain pre-existing medical conditions. Cummings stated that his medication was located in an orange bag inside the impounded vehicle. To obtain the medication, Cummings agreed to be escorted by police to his vehicle and consented to being monitored by police to obtain medication from the orange bag.

5. While at Kihei Police Station, as part of the plan to escort Cummings to his car to obtain Cummings' medication, Cummings was advised of his constitutional rights using MPD Form #103 (the "form," attached hereto as Exhibit A, gov't bates #48). On the form, Cummings initialed and signed it, indicating that he understood his rights, and wrote the accurate time of signature of 10:11 p.m. and the date of March 15, 2020. Because this form was only used in connection with the plan to obtain Cummings' medication from his vehicle, Cummings circled "No" after the question "Would you like to waive your rights and speak with me now". Circling "No" on this form at this time indicated that he did not plan to give

statements about his case while obtaining his medication from the vehicle.

6. It is my recollection upon re-reviewing the form, that Cummings initially started to circle “Yes” on this form after the question “Would you like to waive your rights and speak with me now,” but he then chose instead to circle “No.” My initials are reflected above the partially circled “Yes” to indicate that change. I also signed my name at the end of the form and wrote “E# 15222” near my signature to indicate that my employee number is 15222. I also put the accurate date of March 15, 2020 and time of 22:11 (that is, 10:11 p.m.) next to my signature.

7. In a separate report that I completed and signed on or about March 15, 2020 (attached hereto as Exhibit B, government bates #223), I made a typographical error in stating that Cummings signed the form (Exhibit A) while he was at the Wailuku Police Station. In that report, the noted location was an error and should have stated that Cummings signed the form (Exhibit A) while at the Kihei Police Station, where his impounded car was located. The time of signing the form included in the report (Exhibit B) at 10:11 p.m. is accurate.

8. I am unaware of any statements that Cummings made related to his case in connection with the form that he signed (Exhibit A) for the retrieval of his medication.

9. Cummings was also presented with MPD Form #113, Consent to

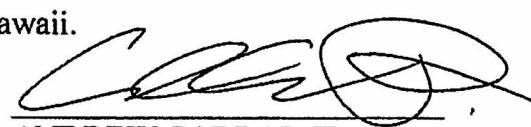
Search, in connection with obtaining his medication from his vehicle. Exhibit C, government bates #44. Cummings signed the consent to search form, indicating that he consented to the search of his vehicle only for purposes of obtaining his medication. The accurate date and time next to Cummings' signature on this form indicate March 15, 2020 at 10:14 p.m. I also signed this form on March 15, 2020.

10. Attached hereto as Exhibit D is a list of items recovered from the search of Cummings vehicle, which included his medications. Cummings and I signed the bottom of this form on March 15, 2020 at 10:30 p.m. after retrieval of Cummings' medications.

11. I was not involved in an interview of Cummings earlier that day. Nor was I present or involved in him signing a separate MPD waiver of rights form (government bates #335) in connection with that interview.

12. My employment with the MPD ended on or about April 08, 2023. I am currently in the process of relocating to Springfield, Missouri, and will arrive in Missouri with my family on April 17, 2023.

Dated: April 13, 2023, in Wailuku, Hawaii.



ANDREW CABRAL JR.

(5)

Case 1:22-cr-00023-DKW Document 75-7 Filed 04/17/23 Page 1 of 1 PageID.308

MAUI COUNTY POLICE DEPARTMENT

YOUR CONSTITUTIONAL RIGHTS

TO: Lyk Rik'o Cummings POLICE REPORT NO.: 20-010287

(Print or type name of person warned)

WARNING OF RIGHTSBefore we ask you any questions, we want to tell you about your rights. SCYou have the right to remain silent. SCAnything you say can be used against you in court. SCYou have the right to talk to a lawyer for advice before we ask you any questions and to have your lawyer with you during questioning. SCIf you cannot afford a lawyer one will be appointed for you before any questioning. SC

(Additional Warnings to Juveniles)

You have the right to talk to your parents, guardians, or any other adult before you are asked any questions and to have any one of them present with you during questioning. _____

In certain instances, you may be subject to the same penalties and punishment as an adult. _____

I understand the English language. I have read and heard this statement of my rights and I understand what my rights are.

Signed J. L. C.Date 3/15/20 Time 10:11 pmWould you like to waive your rights and speak with me now? SC YES NOWarnings given by SC Date 3/15/2020 Time 2211

Witness _____ Date _____ Time _____

MPD Form No. 103 (9/2011)

EXHIBIT A

000109

CUMMINGS_000048

Case 1:22-cr-00023-DKW Document 75-8 Filed 04/17/23 Page 1 of 3 PageID.309

ASSIGNMENT:

On March 15th, 2020 (Sunday) at 1400 hours, I was assigned to assist in an ELECTRONIC ENTICEMENT OF A MINOR type of investigation. The following is documented under Police report number 20-010287.

INFORMATION LEARNED:

On March 13, 14, and 15, 2020 Lyle CUMMINGS (CUMMINGS) used the app "SKOUT" to engage in communications with an undercover law enforcement officer (undercover) posing as a thirteen (13) year old female. The chat transitioned to text messaging shortly after starting on Skout. During the communications, the undercover disclosed the undercover's age as thirteen (13) years old. Following the disclosure, CUMMINGS continued to chat with the undercover and talk about performing sexual acts with the undercover after the age disclosure.

Following the disclosure that the undercover was below the legal age of consent and the discussion of performing sexual acts, CUMMINGS agreed to meet with the undercover for the purposes of engaging in sexual acts which, if actually performed with a person aged thirteen, would constitute a felony offense.

CUMMINGS then traveled to a pre-determined meet location within Kihei, Hawaii, where the undercover told CUMMINGS that the undercover would be waiting.

Upon arrival to the pre-determined location, CUMMINGS was arrested without incident.

Within the center console of his truck, a touch screen cellular phone was observed. A test message was sent to CUMMINGS' mobile device by the undercover. Officers noticed that the phone within CUMMINGS' vehicle lit up and received a notification when the test messages were sent.

CUMMINGS' vehicle had been impounded at the Kihei Police Station pending the execution of a search warrant after he declined to consent to a search of his vehicle LAJ777.

Following CUMMINGS' arrest, he was advised of his Constitutional Rights and subsequently stated that he was just cruising. He gave the passcode for his cell phone which was in his vehicle however, refused to a consent to search his vehicle.

EXHIBIT B

000110

CUMMINGS_000223

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TRANSPORT TO KIHEI POLICE STATION / VERBAL CONSENT:

He was transported to the Kihei Police Station. LAJ777 was impounded and towed to the Kihei Police Station. Prior to being transported to the Wailuku Police Station, CUMMINGS relayed he needed multiple medications for his pre-existing medical conditions. He relayed that within vehicle LAJ777, within an orange bag, was his medication. He relayed he would be willing to be escorted by Police to LAJ777 and consented to being watched by Police as he grabbed his medication from the orange bag. He also verbally consented that Police could look within the bag to ensure he was going to only grab his medication.

TRANSPORT TO WAILUKU POLICE STATION:

I later assisted in transporting CUMMINGS to the Wailuku Police Station. CUMMINGS did not make any utterances regarding this matter while being transported.

WARNING OF RIGHTS:

After arriving at the Wailuku Police Station, CUMMINGS was advised of his Constitutional Rights using MPD Form #103. CUMMINGS initialed and signed the form indicating he understood his rights. This was in regards to allowing Police to search his orange bag prior to him obtaining his needed medication.

Refer to accompanying form for more details.

CONSENT TO SEARCH:

CUMMINGS was presented with MPD Form # 113. CUMMINGS signed the form regarding Police searching his vehicle LAJ777, for only the orange bag, and searching the orange bag only for his medication.

Refer to accompanying form for more details.

EXHIBIT A:

Case 1:22-cr-00023-DKW Document 75-8 Filed 04/17/23 Page 3 of 3 PageID.311

A total of four (4) packets of medication were recovered from the aforementioned orange bag which was located within LAJ777.

Refer to accompanying form for more details.

BAIL ACKNOWLEDGMENT:

Due to the facts and circumstances learned during this investigation, I was assigned to apprise CUMMINGS that he was being charged for the offense of ELECTRONIC ENTAICEMENT OF A CHILD – I, in violation of Hawaii Revised Statutes (HRS) Section 707-756. I advised CUMMINGS regarding this matter using MPD Form #121 (refer to attached form for more details). CUMMINGS signed the form indicating he understood.

ADDITIONAL INFORMATION:

Refer to all other reports for more details.

DISPOSITION:

Refer to main report for more details.

A handwritten signature in black ink, appearing to read "Andrew Cabral Jr." followed by the number "15222" in a stylized font.

Submitted by,

Andrew CABRAL Jr., E# 15222

Sergeant, Juvenile Division

6

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MAUI COUNTY POLICE DEPARTMENT
CONSENT TO SEARCHREPORT NO. 24-010287

CHECK AREA TO BE SEARCHED:

INITIALS OF PERSON
CONSENTING TO SEARCH:

Search of Person

Search of Premises (includes home, land or other real or personal property)

Search of Vehicle LAJ777 Back Seat (Passenger) LC

Other ORK seat bag for medical LC

Location where permission to search obtained:

2201 Pili Mai Hwy, Kihei, HI 96753

I, Lyle Cummings having been informed of my constitutional rights not to have a search made of my vehicle, LAJ777 herein mentioned without a search warrant, and of my right to refuse to consent to such a search, hereby authorize Ofc. A. C. Chenal and Sgt. M. Kanya, #/Ofc. J. Acosta and other officers of the Maui Police Department, County of Maui, State of Hawaii, to conduct a complete search of my 2016 BAG w/ w LAJ777 for medicine. (Person, Premises, etc.) located at 2201 Pili Mai Hwy, Kihei, HI 96753. These officers are authorized by me to take from the above described any evidence, tangible objects, data, photographs, letters, papers, materials, or other property which may desire in connection of the case they are investigating. This written permission is being given by me to the above named officers voluntarily and without any threats or promises of any kind.

WITNESS: John D. CummingsSIGNATURE: Lyle CummingsDate and time: 03/15/2020Date and time: 3/15/20 10:14pm

WITNESS: _____

Date and time: / /

MPD FORM NO. 113 (6/05)

EXHIBIT C

000113

CUMMINGS_000044

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EXHIBIT "A"

The items listed below were recovered as evidence following the execution of a search warrant at 2701 Piilani Hwy, K., #4 97753, County of Maui, on 03/15/2020 at 9:55 hours.

4 PACKS OF PILLS:

① 1 pack: 1x ATORVASTATIN CALCIUM 80mg
 14 pills 1x DIOGLITAZONE HYDROCHLORIDE 40mg.
 2x METOPROLOL SUCCINATE EXTENDED RELEASE 200mg.
 1x Amlodipine Besylate 7mg.
 1x HYDRAZINE HYDROCHLORIDE 100mg.
 2x ACARBOSE 100mg.
 1x JANUVIA 100mg.
 1x GLYBURIDE 10mg.
 1x MG FORMIN HYDROCHLORIDE EXT. RELEASE 500mg.

② 1 pack " " " "

③ 1 pack " " " "

④ 1 pack " " " "

NOTHING FOLLOWS

Recipient: X TyleDate: 3/15/20 Time: 10:30PWitnessed by: Det #151-22Date: 03/15/2020 Time: 22:30

Witnessed by: _____

EXHIBIT D

000114

CUMMINGS_000046

Case 1:22-cr-00023-DKW Document 81 Filed 04/21/23 Page 1 of 1 PageID.353

MINUTES

CASE NUMBER: CR 22-00023 DKW

CASE NAME: USA v. (1) Lyle Rikio Cummings

ATTYS FOR PLA: *Christine Olson
Rebecca Ann Perlmutter

ATTYS FOR DEFT: (1)*Joseph R. Mottl III

INTERPRETER:

JUDGE: Derrick K. Watson REPORTER: Gloria Bediamol

DATE: 4/21/2023 TIME: 10:05 - 10:45

COURT ACTION: EP: Hearing on [69] Defendant's Motion to Suppress Evidence and [70] Motion to Suppress Statements ("Motions") held.

Defendant Lyle Cummings present, not in custody.

Court addressed defense's late filing of supplemental authorities for Motions.

Arguments heard.

[69] Defendant's Motion to Suppress Evidence and [70] Motion to Suppress Statements taken under advisement. Court to issue a written order.

In advance Court stated for the record that both Motions are denied.

Due to simultaneous jury trials scheduled for 6/5/2023, with the consent of the parties Jury Selection/Trial scheduled for 6/5/2023 will be continued to 6/7/2023 at 9:00 a.m. in Aha Kupono before Chief Judge Derrick K. Watson.

Submitted by: Tammy Kimura, Courtroom Manager

IIN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LYLE RIKIO CUMMINGS,

Defendant.

Case No. 22-cr-00023-DKW

**ORDER DENYING FIRST MOTION
TO SUPPRESS**

Defendant Lyle Rikio Cummings moves to suppress certain drug evidence seized from his vehicle pursuant to a search warrant on the grounds that the officers' search exceeded the warrant's scope. Dkt. No. 69. Because Cummings' contention is plainly not true, the motion is DENIED.

LEGAL STANDARD

The Fourth Amendment to the U.S. Constitution guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” Among other things, this provision generally prohibits warrantless searches. *See Coolidge v. New Hampshire*, 403 U.S. 443, 444 (1971).

Search warrants must be based on probable cause, and they must “particularly describ[e] the place to be searched, and the persons or things to be

seized.” U.S. Const. amend. IV. “If the scope of the search exceeds that permitted by the terms of a validly issued warrant . . . , the subsequent seizure is unconstitutional without more.” *Horton v. California*, 496 U.S. 128, 140 (1990). “Whether a search exceeds the scope of a search warrant is an issue we determine through an objective assessment of the circumstances surrounding the issuance of the warrant, the contents of the search warrant, and the circumstances of the search.” *United States v. Hitchcock*, 286 F.3d 1064, 1071 (9th Cir. 2002), *amended on other grounds by* 298 F.3d 1021 (9th Cir. 2002).

RELEVANT FACTUAL ALLEGATIONS

On March 15, 2020, Cummings was arrested by members of the Maui Police Department for electronic enticement of a child in violation of Hawai‘i Revised Statutes (“H.R.S”) §§ 707–756, pursuant to an undercover operation involving law enforcement posing as a fictitious 13-year-old girl online. At the time of the arrest, Cummings had been driving his vehicle, a 2008 Toyota Tacoma. The arresting officer asked Cummings for permission to search his vehicle, and Cummings refused. Dkt. Nos. 74-6-7 (arrest videos). That resulted in the officers impounding the vehicle. *Id.*

The next day, on March 16, 2020, investigators obtained a search warrant, authorizing them to search Cummings’ vehicle for the following:

A touchscreen cellular phone; [and]

Articles of identification or items containing the name(s), photographic impressions, latent fingerprints or palm prints, handwriting or printing of CUMMINGS and other such articles or items which would serve as evidence of ownership, occupancy, possession, or control of the [Tacoma vehicle]. Such items may include driver's licenses, identification cards, passports, certificate of title, registration paperwork, insurance or other motor vehicle cards, pay stubs, and mail or other personal items addressed to CUMMINGS[.]

Dkt. No. 74-1 at S-2 (page 2 of 10).

The officers executed the warrant the same day. They quickly discovered a cellular phone in plain view. Then, while searching for "articles of identification," the officers discovered "approximately 87 grams of cocaine packaged in small baggies, cocaine base (or 'crack'), drug paraphernalia, and cash" located in or around the center console of the vehicle. Dkt. No. 74 at 6.

RELEVANT PROCEDURAL BACKGROUND

Maui County charged Cummings with Electronic Enticement of a Child in the First Degree in violation of H.R.S. §§ 707–756, pursuant to their undercover operation. Later, on June 18, 2021, Cummings was charged in a two-count federal criminal complaint with the enticement of a minor in violation of 18 U.S.C. § 3422(b) and possession with the intent to distribute controlled substances in violation of 21 U.S.C. § 841(b)(1)(C), the latter on the basis of the drugs discovered in Cummings' Tacoma on March 16, 2020. Trial on the federal counts is set for June 7, 2023. Dkt. No. 81.

On March 24, 2023, Cummings filed the instant motion to suppress the drug evidence. Dkt. No. 69. The Government opposed the motion on April 17, 2023, Dkt. No. 74, and Cummings elected not to file a reply brief. *See* Dkt. No. 81. At a hearing on April 21, 2023, the parties agreed that the disposition of the motion would be appropriate without evidentiary testimony. Dkt. No. 81. The Court thereafter heard oral argument from both parties and verbally DENIED the motion. *Id.* This written Order follows.

DISCUSSION

Cummings' argument is straightforward. He does not challenge the validity of the warrant, nor does he assert the absence of probable cause. Cummings asserts only that the officers exceeded the scope of the warrant when, after discovering one item of identification—*i.e.*, the vehicle registration information—they continued to search the vehicle, leading to their discovery of the drugs. *See* Dkt. No. 69 at 3; *see also* Dkt. No. 81.¹ He contends that the officers were obligated to cease their search upon finding a single such “article of identification[],” that any search beyond that point was unconstitutional, and that the drug evidence should thus be suppressed because it was among the items

¹Although the written motion makes certain inarticulate statements regarding the breadth of the warrant, Cummings' counsel clarified at oral argument that the only issue for the Court's determination is whether the officers exceeded the scope of the warrant by searching after having discovered at least one “article of identification” pursuant to the warrant. *See* Dkt. No. 81 (“Your Honor is correct; it is that and that alone.”).

discovered by law enforcement after finding identification linking Cummings to the vehicle.

Cummings provides no legal authority for his contention that the officers were limited to a single “article of identification[],” after which their search had to cease. *See* Dkt. Nos. 69, 81 (“We found no helpful case law, Your Honor.”). The warrant explicitly authorized the officers to search the entire truck for “[a]rticles” (plural) or “items” (plural) tending to show Cummings’ “ownership, occupancy, possession, or control” of the vehicle. Dkt. No. 74-1 at S-2 (page 2 of 10). It did not limit the search to a singular article or item. *See id.* (providing a non-exhaustive, lengthy list of the types of articles or evidence indicated). The officers were not required to cease their search when they found one item—or indeed *any* number of items—responsive to the warrant. And their search of the area in and around the center console was entirely reasonable, given that a vehicle console is a place where individuals commonly keep articles of identification and was likewise within the scope of warrant. The officers’ search, in short, did not exceed the plain language of the warrant.²

²Aside from the warrant’s language, the Court notes that law enforcement is generally allowed to seek cumulative evidence in any given case—not only to corroborate facts already believed to be true, but also in the event that any one piece of evidence is challenged by a defendant. Moreover, as the Government pointed out in its opposition brief, even if the officers’ search *had* exceeded the scope of the warrant, the drug evidence would still be permitted by both the inevitable discovery and automobile exceptions. *See, e.g., Nix v. Williams*, 467 U.S. 431, 444 (1984) (describing the inevitable discovery exception); *United States v. Ruckes*, 586 F.3d 713, 718–19 (9th Cir. 2009) (applying the inevitable discovery exception to a search of a vehicle that

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CONCLUSION

For the foregoing reasons, Cummings' first Motion to Suppress, Dkt. No. 69, is DENIED.

IT IS SO ORDERED.

DATED: May 9, 2023 at Honolulu, Hawai‘i.




Derrick K. Watson
Chief United States District Judge

*United States of America v. Lyle Cummings; Cr. 22-00023 DKW; ORDER
DENYING FIRST MOTION TO SUPPRESS*

would have inevitably been inventoried after impoundment); *United States v. Ross*, 456 U.S. 798, 799, 806–09 (1982) (describing the automobile exception, which allows an officer to search the entirety of a vehicle and any containers within if there is probable cause to believe the vehicle and/or containers contain evidence of a crime); *Michigan v. Thomas*, 458 U.S. 259, 261 (1982) (per curiam) (explaining the automobile exception applies even absent exigent circumstances); *United States v. Garcia*, 205 F.3d 1182, 1187–88 (9th Cir. 2000) (same).

IIN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LYLE RIKIO CUMMINGS,

Defendant.

Case No. 22-cr-00023-DKW

**ORDER DENYING SECOND
MOTION TO SUPPRESS**

Defendant Lyle Rikio Cummings moves to suppress certain statements he made during a Maui Police Department ("MPD") investigation into his involvement with the criminal enticement of a minor. Dkt. No. 70. First, Cummings claims a cellphone-related statement he made to his arresting officer should be suppressed because the officer did not use certain specific language when providing *Miranda* warnings. Second, Cummings claims all statements made after a certain point during a post-arrest, recorded interview should be suppressed because he withdrew his *Miranda* waiver in the middle of the interview.

As explained more fully below, neither claim has merit. First, it is well-established that law enforcement officers are not required to use any particular language when providing *Miranda* warnings, so long as the warnings reasonably

convey the *Miranda* rights. Here, the officer's warnings were more than adequate in this respect, even though the officer did not read from a card. Second, although Cummings did state during the post-arrest interview, "I like talk to my lawyer," he clearly cabined that request to his response to a *single question* about whether he would submit to a polygraph examination. In fact, Cummings immediately clarified that he *did not* want to terminate the interview more generally, and the officers did not ask any additional questions about a polygraph exam. Thus, Cummings' request did not vitiate his consent to speak with the investigators about matters unrelated to the polygraph. The motion is DENIED.

LEGAL STANDARD

I. Provision of *Miranda* Warnings

The Fifth and Sixth Amendments to the U.S. Constitution afford certain protections to criminal detainees during custodial interrogations, including the rights against self-incrimination and of counsel. *See* U.S. Const. amends. V, VI; *see also Vega v. Tekoh*, 142 S. Ct. 2095, 2099–2100 (2022) (citing *Miranda v. Arizona*, 384 U.S. 436 (1966)). Accordingly, prior to any custodial interrogation, law enforcement officials must provide what has become known as *Miranda* warnings -- informing a detainee that "he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be

appointed for him prior to any questioning.” *Vega*, 142 S. Ct. at 2099–2100 (quoting *Miranda*, 384 U.S. at 479). If such warnings are not provided, evidence obtained as a result of an interrogation risks exclusion prior to trial.

It is well-established that no particular language need be used when giving the warnings, so long as the warnings “reasonably ‘convey to a suspect his rights as required by *Miranda*.’” *Duckworth v. Eagan*, 492 U.S. 195, 202–03 (1989) (quoting *California v. Prysock*, 453 U.S. 355, 360 (1981)); *see also Prysock*, 453 U.S. at 359–60 (“This Court has never indicated that the ‘rigidity’ of *Miranda* extends to the precise formulation of the warnings given a criminal defendant. . . . Quite the contrary, *Miranda* itself indicated that no talismanic incantation was required to satisfy its strictures.”).

II. Waiver of *Miranda* Rights

A detainee may waive his *Miranda* rights, so long as the waiver is voluntary, knowing, and intelligent. *Miranda*, 384 U.S. at 444–45, 465. In order to be considered voluntary, a waiver must be “the product of a free and deliberate choice rather than intimidation, coercion, or deception.” *Moran v. Burbine*, 475 U.S. 412, 421 (1986) (citing *Edwards v. Arizona*, 451 U.S. 477, 482 (1981) and *Brewer v. Williams*, 430 U.S. 387, 404 (1977)). “An admission is involuntary if coerced either by physical intimidation or psychological pressure.” *United States v. Shi*, 525 F.3d 709, 730 (9th Cir. 2008) (citation omitted). In order to be considered

knowing and intelligent, a waiver must be “made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.” *Moran*, 475 U.S. at 421 (citing *Edwards*, 451 U.S. at 482 and *Brewer*, 430 U.S. at 404). In the Ninth Circuit, several factors are relevant to evaluating whether a waiver is knowing and intelligent:

- (i) the defendant’s mental capacity;
- (ii) whether the defendant signed a written waiver;
- (iii) whether the defendant was advised in his native tongue or had a translator;
- (iv) whether the defendant appeared to understand his rights;
- (v) whether the defendant’s rights were individually and repeatedly explained to him; and
- (vi) whether the defendant had prior experience with the criminal justice system.

United States v. Price, 980 F.3d 1211, 1226–27 (9th Cir. 2019) (quoting *United States v. Crews*, 502 F.3d 1130, 1140 (9th Cir. 2007)).

It is the Government’s burden to prove the validity of any *Miranda* waiver. *Bumper v. North Carolina*, 391 U.S. 543, 548 (1968). “Only if the ‘totality of the circumstances surrounding the interrogation’ reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived.” *Moran*, 475 U.S. at 421. Waiver need not be express. *Berghuis v. Thompkins*, 560 U.S. 370, 384 (2010). Implicit waiver is

shown, and suffices, where the government establishes both that *Miranda* warnings were given and that the accused understood his rights, after which the accused made an uncoerced statement. *Id.* The law presumes that an individual who, with a full understanding of his rights, acts in a manner inconsistent with those rights' exercise has made a deliberate choice to relinquish the protections the rights afford. *Id.* at 385.

III. Withdrawal of Waiver

Waiver of any *Miranda* right—including, as relevant here, the right to counsel during questioning—may be withdrawn at any time during an interrogation. “[I]f at any point during an interrogation a suspect invokes his right to counsel, all questioning must cease and may not resume in the absence of counsel unless the suspect himself initiates the further discussions.” *Robinson v. Borg*, 918 F.2d 1387, 1390 (9th Cir. 1990) (citing *Edwards v. Arizona*, 451 U.S. 477, 484–85 (1981)); *see also Desire v. Att'y Gen. of Cal.*, 969 F.2d 802, 804–05 (9th Cir. 1992) (“When a defendant has invoked his rights, the police cannot question him further, and cannot ask about whether he wants to talk about the case without his lawyer.”) (citing *Smith v. Illinois*, 469 U.S. 91, 93 (1984)).

That said, courts must “determine whether the accused *actually* invoked his right to counsel.” *Davis v. United States*, 512 U.S. 452, 458–59 (1994) (emphasis in original) (quoting *Smith*, 469 U.S. at 95). “[T]his is an objective inquiry. . . .

[I]f a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel, our precedents do not require the cessation of questioning.” *Id.* In other words, a detainee “must articulate his desire to have counsel present sufficiently clearly that a reasonable officer in the circumstances would understand the statement to be a request for an attorney.” *Id.* at 459; *United States v. Ogbuehi*, 18 F.3d 807, 813 (9th Cir. 1994) (explaining that courts review a detainee’s words “as ordinary people would understand them,” and “[i]f the defendant’s request clearly ‘expresses his desire to deal with the police only through counsel,’ then all interrogation must cease”) (quoting *Edwards*, 451 U.S. at 484). “If the desire is not clearly expressed, then further questioning must be limited to clarifying the defendant’s intention.” *Id.* (quoting *Edwards*, 451 U.S. at 484).

RELEVANT FACTUAL ALLEGATIONS

On March 15, 2020, MPD officers arrested Cummings for electronic enticement of a child in violation of Hawai‘i Revised Statutes (“H.R.S”) §§ 707–756, pursuant to an undercover operation that involved law enforcement posing as a fictitious 13-year-old girl online. Immediately following the arrest, while Cummings was standing on the sidewalk handcuffed outside of his vehicle, MPD Detective Oran Satterfield engaged in the following colloquy with Cummings:

OS: Mr. Cummings, turn around. My name is Detective Satterfield with the Maui Police Department. You have the right to remain silent. Anything you say can be used against you in court. You have the right to talk to an attorney before we ask any questions and to have that attorney present with you during questioning. If you cannot afford an attorney, one will be appointed to you before any questioning. Mr. Cummings, do you understand your rights?

LC: Yes.

OS: Where you headed tonight?

LC: Just cruising.

OS: Just cruising?

LC: Yeah.

OS: Okay. Anything in your pockets?

LC: No.

OS: We're going to search you. Anything in your pockets, anything we can poke ourselves with?

LC: No.

OS: Nothing? Anything in your pocket—you have a cell phone?

LC: No.

OS: No cell phone.

LC: It stay in the car.

OS: Stay in the car? Okay. What's the password for your cell phone?

LC: 071122.

OS: 071122? 071122. Okay. Can we have consent to search your car? You can refuse us consent; I'm just asking your permission.

LC: I refuse.

OS: You refuse consent? Okay. We're going to impound your car.

Dkt. No. 75-5 (arrest video). The colloquy concluded and officers searched Cummings' pockets.

Cummings was then transported to the Kihei Police Station, where he was interviewed by two law enforcement officers, MPD Officer LeeAnn Galario-Guzman and Homeland Security Investigations Agent Laura Dai. This interview was video-recorded. Dkt. No. 75-1 (interview video). Prior to the commencement of the interview, Officer Galario-Guzman presented Cummings with a waiver of rights form, MPD Form 103. *Id.* The form stated, as relevant here:

WARNING OF RIGHTS

Before we ask you any questions, we want to tell you about your rights.

You have the right to remain silent.

Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions and to have your lawyer with you during questioning.

If you cannot afford a lawyer one will be appointed for you before any questioning. . . .

I understand the English language. I have read and heard this statement of my rights and I understand what my rights are.

Dkt. No. 75-3. Beneath this warning, there was a blank for a signature, date, and time, and the question, “Would you like to waive your rights and speak with me now?” along with a space to mark “YES” or “NO.” *Id.* As Galario-Guzman provided the form to Cummings, she said:

Okay. So, um, before I ask questions, we’re going to read you your rights and then . . . it’s up to you if you want to say anything or not. Okay? . . . And then I going [*sic*] read this aloud to you, you just g’ . . . follow with me. . . . It’s just so you understand it. Alright?

Dkt. No. 75-2 at 1.

Galario-Guzman then instructed Cummings to follow along on the form as she read the contents aloud and to write his initials next to each sentence if he understood. She read the form:

GG: “Before we ask you any questions, we want to tell you about your rights.” So if you understand that, you can initial.

LC: (Writes his initials.)

GG: “You have the right to remain silent.” You understand? You understand that?

LC: Yes. (Writes his initials.)

GG: “Anything you say can be used against you in court.”

LC: Yes. (Writes his initials.)

GG: You understand? Okay. “You have the right to talk to a lawyer for advice before we ask you any questions and to have your lawyer with you during questioning.” You understand?

LC: Yeah. (Writes his initials.)

GG: Okay. "If you cannot afford a lawyer one will be appointed for you before any questioning." You understand?

LC: Yes. (Writes his initials.)

GG: Okay. Initial please. Okay, so, we'll ask you . . . skip that part and just like you read this one out loud. And if you understand it, sign, today's date, and time.

LC: "I understand the English language. I have read and heard this statement of my rights and I understand what my rights are."

GG: You understand, yeah, what just read?

LC: Yeah.

GG: Okay. Just sign.

LC: (Signs his name with date and time.) . . .

GG: Okay and the next line is "Would you like to waive your rights and speak with me now?" So like I—like how you—right now is—if you want to speak with us and then later on say you don't want to speak with us, that's fine. We'll end the conversation and—and you get—um—taken with the officers out there.

LC: Okay.

GG: You want to speak with me?

LC: Yeah.

GG: Okay.

LC: (Writes his initials on the line corresponding with the word "YES" on the form, indicating that he wished to speak with law enforcement. Then hands the form to Galario-Guzman.)

Id. at 1–3.

Questioning ensued, with Cummings voluntarily answering questions for approximately seven minutes (until minute 9:45 on the video recording). *See id.* at 3–11. At that point, the following conversation took place:

GG: Are you willing to do . . . um . . . polygraph exam, if we are able to do it today?

LC: Uh . . .

GG: A lie detector test.

LC: I like talk to my lawyer.

GG: You like talk to your attorney? Okay. Alright. And you like talk to your lawyer because of the polygraph?

LC: Yeah.

GG: You fine talking with us still or you . . . you want to talk to your attorney already?

LC: Depends on the questions.

GG: Okay. So you're still willing for speak with us?

LC: Yeah.

GG: Okay.

Id. at 11. Questioning then continued for about nine additional minutes, with Cummings continuing to answer questions without further mention or invocation of his right to counsel. *Id.* at 11–21.

RELEVANT PROCEDURAL BACKGROUND

Maui County charged Cummings with Electronic Enticement of a Child in the First Degree in violation of H.R.S. §§ 707–756 pursuant to their undercover operation. On June 18, 2021, Cummings was charged in a two-count federal criminal complaint with the enticement of a minor in violation of 18 U.S.C. § 3422(b) and possession with the intent to distribute controlled substances in violation of 21 U.S.C. § 841(b)(1)(C). Trial on the federal counts is set for June 7, 2023. Dkt. No. 81.

On March 24, 2023, Cummings filed the instant motion to suppress certain statements. Dkt. No. 69. First, he contends the provision of his cellphone passcode to Detective Satterfield at the time of his arrest should be suppressed, along with evidence obtained pursuant to that statement. He claims the *Miranda* warnings Satterfield gave were invalid because Satterfield did not ask, “Would you like to speak with [me]?” at the conclusion of the warnings, as is written on the bottom of MPD Form 103. *See* Dkt. Nos. 75-3, 81. Second, Cummings contends that any statements he made in the post-arrest interview after he said, “I like talk to my lawyer,” should be suppressed because the officers were obligated to end the interview immediately upon that statement.

The Government opposed the motion on April 17, 2023, Dkt. No. 75, and Cummings elected not to file a reply brief. *See* Dkt. No. 81. At a hearing on April

21, 2023, the parties agreed that the Court's disposition of the motion was appropriate without evidentiary testimony. Dkt. No. 81. The Court thereafter heard oral argument from both parties and verbally DENIED the motion. *Id.* This written Order follows.

DISCUSSION

I. Detective Satterfield's *Miranda* warnings were valid.

Miranda compels an interrogating officer to inform a detainee that "he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning." *Vega*, 142 S. Ct. at 2099–2100 (quoting *Miranda*, 384 U.S. at 479). Detective Satterfield informed Cummings of each of these rights when he said, prior to initiating questioning:

My name is Detective Satterfield with the Maui Police Department. You have the right to remain silent. Anything you say can be used against you in court. You have the right to talk to an attorney before we ask any questions and to have that attorney present with you during questioning. If you cannot afford an attorney, one will be appointed to you before any questioning. Mr. Cummings, do you understand your rights?

Dkt. No. 75-5 (arrest video). Further, as reflected in the arrest video provided by the government, Detective Satterfield's warnings were given in a professional, serious manner. *See id.* Satterfield did not rush through the warnings or otherwise

render them unclear or coercive. *See id.; Doody v. Schriro*, 548 F.3d 847, 862 (9th Cir. 2008) (validity of warnings depends on the manner in which they were given). Moreover, Satterfield ensured that Cummings understood the warnings before proceedings with his first question, “Where you headed tonight?” *Id.* (asking, “Mr. Cummings, do you understand your rights?” to which Cummings replied, “Yes”).

Cummings contends that the warnings were invalid because Satterfield did not specifically ask the question, “Would you like to speak with [me]?” at the conclusion of the warnings—a question that appears on the MPD Form 103. *See* Dkt. Nos. 75-3, 81.¹ However, as the Supreme Court has made clear, there is no particular language that must be used when providing *Miranda* warnings. *See, e.g., Prysock*, 453 U.S. at 359–60 (holding *Miranda*’s “rigidity” does not “extend[] to the precise formulation of the warnings given a criminal defendant”). Instead, the question is whether the warnings “reasonably ‘convey[ed]’” the *Miranda* rights. *Duckworth*, 492 U.S. at 202–03 (quoting *Prysock*, 453 U.S. at 360).

Here, Detective Satterfield’s warnings certainly did so, there is no evidence or even argument that Cummings did not understand those rights, having, in fact, admitted that he did, and there is no evidence that Cummings wished to invoke any of his rights at that time, as he subsequently did when interviewed by law

¹Cummings admits there is no caselaw to support his position that this particular question must be asked simply because it appears on the MPD rights form. Dkt. No. 81.

enforcement officers later that evening at the Kihei Police Station. Though Cummings' waiver was not express, "the 'totality of the circumstances surrounding the investigation' reveal both an uncoerced choice and the requisite level of comprehension" *See Berghuis*, 560 U.S. at 384; *Moran*, 475 U.S. at 421; *see also ibid.* (no evidence or allegation of "intimidation, coercion, or deception"); *Shi*, 525 F.3d at 730 (no evidence or allegation of "physical intimidation or psychological pressure"); *Price*, 980 F.3d at 1226–27 (six relevant factors). In short, there was nothing constitutionally defective about Cummings' March 15, 2020 interview by Detective Satterfield.

II. Cummings did not withdraw his waiver of his right to counsel.

It is undisputed that Cummings voluntarily, knowingly, and intelligently waived his *Miranda* rights *prior to* the commencement of his post-arrest interview by Officer Galario-Guzman and Agent Dai. However, Cummings asserts that he withdrew his waiver in the middle of the interview by making the statement, "I like talk to my attorney," upon being asked if he would submit to a polygraph exam. *See* Dkt. Nos. 75-1 (interview video at minute 09:45); 75-2 at 11 (interview transcript); 81 (oral argument).

No such withdrawal occurred. Viewing the circumstances of Cummings' statement "objective[ly]" and "as ordinary people would understand them," Cummings did not "articulate his desire to have counsel present sufficiently clearly

that a reasonable officer in the circumstances would understand the statement to be a request for an attorney.” *See Davis*, 512 at 458–59; *Ogbuehi*, 18 F.3d at 813. Rather, a reasonable officer would have interpreted Cummings’ statement exactly as Galario-Guzman and Dai appear to have interpreted it—as a *response* to Galario-Guzman’s specific question about whether Cummings would submit to a polygraph examination. Cummings made the statement in the same tone of voice and with the same rate of speech as the rest of his responses to the officer’s questions over the prior seven minutes. *See* Dkt. No. 75-1. It was, at most, ambiguous whether he wanted an attorney *in general* for the rest of the interview, or whether he wanted to consult with an attorney about submitting to a polygraph, the particular issue with which he had just been presented. Accordingly, the officers appropriately clarified Cummings’ request. *See Ogbuehi*, 18 F.3d at 813 (“If the desire is not clearly expressed, then further questioning must be limited to clarifying the defendant’s intention.”). In a measured and neutral manner, Galario-Guzman asked, “You like talk to your attorney? Okay. Alright. And you like talk to your lawyer because of the polygraph?” to which Cummings promptly replied, “Yeah.” Dkt. No. 75-2 at 11. Galario-Guzman then clarified Cummings’ intention twice more:

GG: You fine talking with us still or you . . . you want to talk to your attorney already?

LC: Depends on the questions.

GG: Okay. So you're still willing for speak with us?

LC: Yeah.

GG: Okay.

Id. Thus, Cummings clearly indicated that he was invoking only his right not to answer questions relating to a polygraph without an attorney present. And, moreover, he indicated his willingness and ability to invoke that right as the interview proceeded, “[d]epend[ing] on the questions” posed. *Id.* Thus, as the officers correctly clarified, Cummings did not “*actually invoke* his right to counsel” as it pertained to the interrogation as a whole. *See Davis*, 512 U.S. at 458–59 (emphasis in original). No further questions relating to a polygraph examination were posed during the interview, and there was no violation of Cummings’ right to counsel.

CONCLUSION

For the foregoing reasons, Cummings’ second Motion to Suppress, Dkt. No. 70, is DENIED.

IT IS SO ORDERED.

DATED: May 9, 2023 at Honolulu, Hawai‘i.




Derrick K. Watson
Chief United States District Judge

Joseph R. Mottl, Esq. #3118
P.O. Box 235979
Honolulu, HI 96823
Phone: (808) 371-7595

Attorney for Defendant
Lyle Rikio Cummings

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

United States of America,

Plaintiff,

vs.

Lyle Rikio Cummings,

Defendant.

Cr. No. 22-00023 DKW

Defendant Lyle Rikio Cummings' Motion in Limine #1 ; Exhibits A - D

**Trial Date; 6/7/23 at 900 a.m.
Judge: Hon. Derrick K. Watson**

Defendant Lyle Rikio Cummings' Motion in Limine #1

Defendant Lyle Rikio Cummings, through counsel, moves for pretrial orders as follows. Due to continuing problems with computer word processing a memorandum of points and authorities will be soon filed.

1. **Motion in Limine No. 1: Re Exclusion from Introduction at Trial of Illegal Substances Allegedly Seized from Defendant's Truck (i.e. Property Control Numbers 748028, 748031, 748039, 748046, and 748047).**

Defendant Lyle Rikio Cummings moves this Honorable Court to exclude from evidence at trial the illegal substances seized from Defendants truck and placed into evidence with Property Control Numbers 748028, 748031, 748039, 748046, and 748047. This motion is brought on grounds that on the evening of March 15, 2020 officers of the Maui Police Department, including Sgt. Andres Cabral, Jr., entered the

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Defendant's impounded truck, sealed and stored in evidence at Kihei Police Substation, searched the interior of the impounded truck, removed items from within impounded truck, and possibly engaged in other activities without a search warrant and without making entries on the truck's related Property Report #20-101287.

This broke the Chain of Custody of the impounded truck before a search warrant was obtained and the truck searched pursuant to the warrant the next day, March 16, 2020. When the above-referenced illegal substances were seized and placed into evidence under Property Control Numbers 748028, 748031, 748039, 748046, and 748047 they had no verifiable connection with the truck as it was when in the possession of Lyle Cummings.

Following their unauthorized breaking and entering of the truck, the officers transported the Defendant directly to the Kahului Main Station where he was booked and asked to complete another waiver of Miranda rights form and a written Authorization to Search his truck.

Dated at Honolulu, Hawaii, May 22, 2023.

/s/ Joseph R. Mottl

Joseph R. Mottl, Esq.
For Defendant
Lyle Rikio Cummings

ASSIGNMENT:

On March 15th, 2020 (Sunday) at 1400 hours, I was assigned to assist in an ELECTRONIC
ENTICEMENT OF A MINOR type of investigation. The following is documented under Police
report number 20-010287.

INFORMATION LEARNED:

On March 13, 14, and 15, 2020 Lyle CUMMINGS (CUMMINGS) used the app "SKOUT" to
engage in communications with an undercover law enforcement officer (undercover) posing as a
thirteen (13) year old female. The chat transitioned to text messaging shortly after starting on
Skout. During the communications, the undercover disclosed the undercover's age as thirteen
(13) years old. Following the disclosure, CUMMINGS continued to chat with the undercover
and talk about performing sexual acts with the undercover after the age disclosure.

Following the disclosure that the undercover was below the legal age of consent and the
discussion of performing sexual acts, CUMMINGS agreed to meet with the undercover for the
purposes of engaging in sexual acts which, if actually performed with a person aged thirteen,
would constitute a felony offense.

CUMMINGS then traveled to a pre-determined meet location within Kihei, Hawaii, where the
undercover told CUMMINGS that the undercover would be waiting.

Upon arrival to the pre-determined location, CUMMINGS was arrested without incident.

Within the center console of his truck, a touch screen cellular phone was observed. A test
message was sent to CUMMINGS' mobile device by the undercover. Officers noticed that the
phone within CUMMINGS' vehicle lit up and received a notification when the test messages
were sent.

CUMMINGS' vehicle had been impounded at the Kihei Police Station pending the execution of
a search warrant after he declined to consent to a search of his vehicle LAJ777.

Following CUMMINGS' arrest, he was advised of his Constitutional Rights and subsequently
stated that he was just cruising. He gave the passcode for his cell phone which was in his vehicle
however, refused to a consent to search his vehicle.

Exhibit A

CUMMINGS_0

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TRANSPORT TO KIHEI POLICE STATION / VERBAL CONSENT:

He was transported to the Kihei Police Station. LAJ777 was impounded and towed to the Kihei Police Station. Prior to being transported to the Wailuku Police Station, CUMMINGS relayed he needed multiple medications for his pre-existing medical conditions. He relayed that within vehicle LAJ777, within an orange bag, was his medication. He relayed he would be willing to be escorted by Police to LAJ777 and consented to being watched by Police as he grabbed his medication from the orange bag. He also verbally consented that Police could look within the bag to ensure he was going to only grab his medication.

TRANSPORT TO WAILUKU POLICE STATION:

I later assisted in transporting CUMMINGS to the Wailuku Police Station. CUMMINGS did not make any utterances regarding this matter while being transported.

WARNING OF RIGHTS:

After arriving at the Wailuku Police Station, CUMMINGS was advised of his Constitutional Rights using MPD Form #103. CUMMINGS initialed and signed the form indicating he understood his rights. This was in regards to allowing Police to search his orange bag prior to him obtaining his needed medication.

Refer to accompanying form for more details.

CONSENT TO SEARCH:

CUMMINGS was presented with MPD Form # 113. CUMMINGS signed the form regarding Police searching his vehicle LAJ777, for only the orange bag, and searching the orange bag only for his medication.

Refer to accompanying form for more details.

EXHIBIT A:

CUMMINGS_000224

000142

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A total of four (4) packets of medication were recovered from the aforementioned orange bag which was located within LAJ777.

Refer to accompanying form for more details.

BAIL ACKNOWLEDGMENT:

Due to the facts and circumstances learned during this investigation, I was assigned to apprise CUMMINGS that he was being charged for the offense of ELECTRONIC ENTRICEMENT OF A CHILD - I, in violation of Hawaii Revised Statutes (HRS) Section 707-756. I advised CUMMINGS regarding this matter using MPD Form #121 (refer to attached form for more details). CUMMINGS signed the form indicating he understood.

ADDITIONAL INFORMATION:

Refer to all other reports for more details.

DISPOSITION:

Refer to main report for more details.

Submitted by,

Andrew CABRAL Jr., E#15222

Sergeant, Juvenile Division

CUMMINGS_000225

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MAUI COUNTY POLICE DEPARTMENT PROPERTY REPORT

REPORT NO.

20-010287

TYPE OF PRO PE RTY	PRISONER PROPERTY RECEIPT		DATE ARRESTED	CHARGE	OFFICER CONDUCTING SEARCH		FORM 137	DISTRICT REPORT NO	
	NAME OF PRISONER	LAST NAME	FIRST	MIDDLE					
PRISONER SIGNATURE					DATE PROPERTY TAKEN	TIME	WITNESS TO SEARCH		
PROPERTY RECEIPT		OFFICER RECEIVING PROPERTY					DATE PROPERTY REC - TIME		
NAME OF OWNER (IF KNOWN)		LAST NAME	FIRST	MIDDLE	ADDRESS				
EVIDENCE RECORD		CLASSIFICATION	DATE OCCURRED	RECOVERED BY	NAME	DATE RECOVERED	TIME		
COMPLAINANT		LAST NAME	FIRST	MIDDLE	ADDRESS				
STATE OF HAWAII		LAST NAME	FIRST	MIDDLE	ADDRESS				
NAME OF OWNER		LAST NAME	FIRST	MIDDLE	ADDRESS				
LOCATION/PERSON RECOVERED FROM		LAST NAME	FIRST	MIDDLE	ADDRESS				
WITNESS TO RECOVERY		LAST NAME	FIRST	MIDDLE	ADDRESS				
BRIEF FACTS AND CIRCUMSTANCES OF RECOVERY BELOW LISTED VEHICLE RECOVERED THROUGH INVESTIGATION OF THE ABOVE CASE.									
ITEM NO.	QTY	ITEM/ARTICLE	DESCRIPTION (TRADEMARK, COLOR, SIZE, ETC)				SERIAL NO	\$ VALUE	WHERE/ HOW MARKED (EVIDENCE ONLY)
1	1	VEHICLE	WHITE 2008 TOYOTA TACOMA PKUP TRUCK, VIN 5TE1X22N282529314 PLATES LAJ 777						
CHAIN OF CUSTODY - PROPERTY TRANSFER									
ITEM NO.	RECEIVED FROM SIGNATURE			RECEIVED BY SIGNATURE			DATE	TIME	
1	DET. J. P. 10653			DET. J. P. 10653			03.15.20	2040	
1	DET. J. P. 10653			DET. J. P. 10653			03.15.20	2040	
1	DET. J. P. 10653			DET. J. P. 10653			03.15.20	2040	
REPORT WRITER		DATE	TIME	SUPERVISOR APPROVAL			DATE	TIME	
RECEIVED BY THE CHIEF OF POLICE, OR OFFICER I HEREBY CERTIFY THAT I AM THE LEGAL OWNER OR LEGAL AGENT OF OWNER OF THE ABOVE DESCRIBED PROPERTY		THE ABOVE DESCRIBED PROPERTY							
SIGNATURE		ADDRESS	PHONE	CITY/TOWN	STATE	DATE	TIME		
FINAL DISPOSITION OF PROPERTY									

Exhibit B

**MAUI POLICE DEPARTMENT
CRIME LAB WORK REQUEST**

Maui Police Department Drug Analysis Unit
[Redacted]
Received by: <u>BL</u>

**MAUI POLICE DEPARTMENT
CRIME LABORATORY - DRUG ANALYSIS UNIT**
55 Mahalani St, Wailuku, HI 96793
Tel (808) 244-6448, Fax (808) 270-6514

Request Date: 2020-07-27
Agency Case No.: 20-010371 BL
Classification/Offense: PRO/DANG/DRUG I

Requesting Agency/District: Maui Police Department/Criminal Investigation Division
Agency Address: 55 Mahalani Street Wailuku, HI 96793
Requestor: Detective Matthew Bigoss Requestor's Phone #: (808) 244-6313
Date of Offense: 2020-03-16 Trial Date: _____
Suspect: Lyle Cummings Due Date: _____

Attach copy of the Evidence/Property Report to Crime Lab Work Request

Has this evidence been analyzed by another laboratory?
<input type="checkbox"/> Yes (Attach copy of report) <input checked="" type="checkbox"/> No
Specify: <input checked="" type="checkbox"/> New case <input type="checkbox"/> Additional Evidence <input type="checkbox"/> Resubmission
Will processing for latent fingerprints be requested on any items?
<input type="checkbox"/> Yes (Submit MPD Form 187) <input checked="" type="checkbox"/> No

List of Evidence to be Analyzed		
Report No.	Property Control Number	Latent Fingerprints
20-010371	748028	<input type="checkbox"/>
20-010371	748031	<input type="checkbox"/>
20-010371	748039	<input type="checkbox"/>
20-010371	748046	<input type="checkbox"/>
20-010371	BL 748047	<input type="checkbox"/>
20-010371		<input type="checkbox"/>
		<input type="checkbox"/>

Comments:
Please test and weigh the suspected cocaine and marijuana concentrate associated with the property #s above. Note that positive field tests and weights of the cocaine were obtained when initially recovered.

Requested by: Detective Matthew Bigoss / E#13232 / BL Date: 2020-07-27
Print Name / ID# / Signature

Supervisor Approval: Detective Matthew Bigoss / E#13232 / BL Date: 2020-07-27
Print Name / ID# / Signature

By submitting this request the requestor agrees to and understands that the MPD Crime Laboratory will select the appropriate method(s) for the processing/testing of the evidence. Submitted evidence will be processed/analyzed according to laboratory policies and procedures. The laboratory may perform technically justifiable deviations from policies and procedures. If you do not receive results within 21 working days you may contact the Criminal Investigation Division Commander at 244-6428.

CUMMINGS_000327

Exhibit C

*Need Property & Warrant
& SEARCH*

000145

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. NO. 22-00023 DKW
)	
Plaintiff,)	
	)	DECLARATION OF ANDREW
vs.	)	CABRAL JR.
)	
LYLE RIKIO CUMMINGS,)	
)	
Defendant.)	
)	

DECLARATION OF ANDREW CABRAL JR.

I, the undersigned, Andrew Cabral Jr., declare that the following information is true and accurate to the best of my knowledge, under the penalties of perjury:

1. I, Andrew Cabral Jr., was a Police Sergeant with the Maui Police Department (MPD) from approximately April 01, 2020, until April 08, 2023. Generally, my duties included (but were not limited to) coordination/supervision of the Police Recruit Academy, conducting various training within the department, and ensuring training records within the department were maintained.

2. On March 15, 2020, I provided some support during an operation involving electronic enticement of minors. I was located at the Kihei Police Station that day during the times pertinent to this affidavit.

3. It is my understanding that on that same day, March 15th, 2020, an individual identified to be Lyle Rikio Cummings (hereinafter "Cummings") was

Exhibit D

000146

arrested by law enforcement from the MPD in connection with that operation.

4. Following Cummings' arrest, it is my understanding that Cummings was transported to the Kihei Police Station located on Maui. Cummings' vehicle was impounded and also towed to the Kihei Police Station. While at the Kihei Police Station, and prior to being transported to the Wailuku Police Station, it is my understanding that Cummings informed law enforcement that he needed multiple medications for certain pre-existing medical conditions. Cummings stated that his medication was located in an orange bag inside the impounded vehicle. To obtain the medication, Cummings agreed to be escorted by police to his vehicle and consented to being monitored by police to obtain medication from the orange bag.

5. While at Kihei Police Station, as part of the plan to escort Cummings to his car to obtain Cummings' medication, Cummings was advised of his constitutional rights using MPD Form #103 (the "form," attached hereto as Exhibit A, gov't bates #48). On the form, Cummings initialed and signed it, indicating that he understood his rights, and wrote the accurate time of signature of 10:11 p.m. and the date of March 15, 2020. Because this form was only used in connection with the plan to obtain Cummings' medication from his vehicle, Cummings circled "No" after the question "Would you like to waive your rights and speak with me now". Circling "No" on this form at this time indicated that he did not plan to give

statements about his case while obtaining his medication from the vehicle.

6. It is my recollection upon re-reviewing the form, that Cummings initially started to circle "Yes" on this form after the question "Would you like to waive your rights and speak with me now," but he then chose instead to circle "No." My initials are reflected above the partially circled "Yes" to indicate that change. I also signed my name at the end of the form and wrote "E# 15222" near my signature to indicate that my employee number is 15222. I also put the accurate date of March 15, 2020 and time of 22:11 (that is, 10:11 p.m.) next to my signature.

7. In a separate report that I completed and signed on or about March 15, 2020 (attached hereto as Exhibit B, government bates #223), I made a typographical error in stating that Cummings signed the form (Exhibit A) while he was at the Wailuku Police Station. In that report, the noted location was an error and should have stated that Cummings signed the form (Exhibit A) while at the Kihei Police Station, where his impounded car was located. The time of signing the form included in the report (Exhibit B) at 10:11 p.m. is accurate.

8. I am unaware of any statements that Cummings made related to his case in connection with the form that he signed (Exhibit A) for the retrieval of his medication.

9. Cummings was also presented with MPD Form #113, Consent to

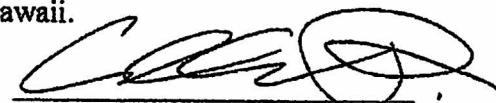
Search, in connection with obtaining his medication from his vehicle. Exhibit C, government bates #44. Cummings signed the consent to search form, indicating that he consented to the search of his vehicle only for purposes of obtaining his medication. The accurate date and time next to Cummings' signature on this form indicate March 15, 2020 at 10:14 p.m. I also signed this form on March 15, 2020.

10. Attached hereto as Exhibit D is a list of items recovered from the search of Cummings vehicle, which included his medications. Cummings and I signed the bottom of this form on March 15, 2020 at 10:30 p.m. after retrieval of Cummings' medications.

11. I was not involved in an interview of Cummings earlier that day. Nor was I present or involved in him signing a separate MPD waiver of rights form (government bates #335) in connection with that interview.

12. My employment with the MPD ended on or about April 08, 2023. I am currently in the process of relocating to Springfield, Missouri, and will arrive in Missouri with my family on April 17, 2023.

Dated: April 13, 2023, in Wailuku, Hawaii.



ANDREW CABRAL JR.

CLARE E. CONNORS #7936
United States Attorney
District of Hawaii

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Attorneys for Plaintiff
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. NO. 22-00023 DKW
)	
Plaintiff,	)	UNITED STATES' OPPOSITION
vs.	)	TO DEFENDANT'S MOTION IN
	)	LIMINE #1; ECF 109;
	)	CERTIFICATE OF
	)	SERVICE
LYLE RIKIO CUMMINGS,)	
)	
	)	Hearing: June 7, 2023 at 1:30 p.m.
Defendant.	)	Chief Judge Derrick K. Watson
)	

UNITED STATES' OPPOSITION TO DEFENDANT'S MOTION IN LIMINE
#1, ECF 109

By and through the undersigned, the United States hereby files its opposition to Defendant Lyle Rikio Cummings' Motion in Limine #1 (the "Motion"), filed on May 24, 2023, ECF No. 109. At the final pretrial conference on May 24, 2023, the Court identified the Motion as a motion to suppress in substance that should have been filed by the March 24, 2023 deadline. The Motion and the attached exhibits filed with it show that Cummings has not raised any issues with legal merit or contested factual issues with credible support that are relevant to determining suppression of the drugs seized from the defendant's truck pursuant to a search warrant executed on March 16, 2020.

I. SUMMARY OF FACTS AND ARGUMENT

A. Relevant Facts

On the evening of March 15, 2020, between approximately 7:00 to 8:00 p.m., Cummings was arrested in or around Kihei, Maui, by the Maui Police Department (MPD) during an undercover operation involving enticement of a minor. Cummings was then transferred to the Kihei Police Station. At the Kihei Station, Cummings participated in a voluntary interview with law enforcement at around 8:30 p.m.

The truck that Cummings was driving at the time of his arrest was towed, impounded, and secured at the Kihei Police Station's Salley Port. As part of the operation and investigation, MPD officers applied for a search warrant of the truck

that they planned to execute, and did in fact execute, the day after Cummings' arrest, on March 16, 2020.

Because Kihei Station is not a long-term holding facility, Cummings was set to be transferred to the Wailuku Police Station later that same night of his arrest.

See Gov't Response in Opp. to Motion to Suppress, ECF No. 75, Exhs. 75-6, -8.

Prior to his transfer, officers learned from Cummings that he had personal medications stored in the truck. Pursuant to MPD protocol, officers sought consent to "search" for the medications in the truck and retrieve them for Cummings to bring with him to the Wailuku Station. Thus, prior to moving Cummings to the Wailuku station, officers had Cummings sign a consent to search form, and waiver of rights form, and escorted Cummings to the truck's location in the Kihei Station Salley Port. *See ECF No. 75, Exhs. 75-6, -7, -8, and -9.*

Cummings and three officers were present at the Kihei Police Station when the medications were obtained from the truck, located in an orange bag that Cummings had identified. *See ECF No. 75, Exhs. 75-6, -8, -9, and -10.* Pursuant to the verbal and written consent to search, officers searched the orange bag and listed the items contained in it on the property form. *Id.* Thereafter, Cummings was transported to the Wailuku Police Station. *Id.*

None of the medications in the orange bag are charged as part of Count 2 of the indictment. The controlled substances that are charged in Count 2 including

cocaine and cocaine base, in addition to the marijuana and THC, were found the following day during the execution of the search warrant on the truck. *See ECF 74, Exhs. 74-1 to -3 (Search Warrant, Return, and Selected Photographs from the Execution of the Search Warrant).*

B. Defendant's Argument

In the instant Motion, without providing any legal support or credible evidence, the defendant appears to argue that the cocaine, cocaine base (known as "crack"), and THC/marijuana seized from the truck on March 16, 2020 pursuant to a search warrant (collectively, the "seized drugs")¹, should be suppressed. The defendant argues that, on the night of his arrest on March 15, 2020, prior to properly obtaining a search warrant, law enforcement went into Cummings' truck (that had been impounded at the Kihei Police Station) without Cummings' consent. From the Motion and the accompanying documents, it is unclear exactly what Cummings is alleging law enforcement did improperly during this initial "search." The defendant writes obliquely that MPD, including Sgt. Andrew Cabral, entered the truck, searched the interior, and "removed items from within impounded truck, and possibly engaged in other activities without a search

¹ In his Motion, the defendant asks to suppress the illegal substances taken from the truck that have been labeled with Property Control Numbers (PCN) 748028, 748031, 748039, 748046, and 748047. A comparison to the lab report produced by the government shows that these PCNs correspond to the cocaine, cocaine base, and THC/marijuana.

warrant..." Motion at p.2. An orange bag of medications was indeed removed from the truck, but it's the "other activities" statement that Cummings fails to specify or present evidence of any possible wrongdoing that could have occurred.

Furthermore, based on defense counsel's specific statements during the pretrial conference on May 24, 2023, and a post-hearing conversation between the undersigned and defense counsel on May 24, 2023, counsel represented that *defendant is not arguing that officers seized the "seized drugs" (the cocaine, crack, and THC/marijuana) from the truck on March 15, 2020.* This position is also consistent with the documentation in this case. It is well documented that law enforcement seized the drugs that are subject to Count 2 plus the marijuana/THC from the truck pursuant to a valid search warrant on March 16, 2020. And Cummings has zero evidence to present to the contrary at an evidentiary hearing. Rather, Cummings seems to be arguing only that the March 15, 2020 consent search "broke the Chain of Custody of the impounded truck." Motion at p. 2. As discussed above, Cummings does not provide any articulable explanation of how the orange bag with Cummings' medications that was taken from the truck prior to the execution of the search warrant relates to the seized drugs.

Cummings appears to base his entire argument on the fact that Officer Cabral wrote a declaration in connection with the government's opposition to

Cummings' prior motion to suppress statements. In that declaration, Cabral admitted that he made a typographical error in a separate report that he had completed on March 15, 2020 (Cabral's March 15th Report). ECF No. 75, Exhs. 6 and 8. In Cabral's March 15th Report, he mistakenly wrote that Cummings signed an MPD 103 Waiver of Rights form while Cummings was at Wailuku Police Station.

Cabral explains in his declaration that his March 15th Report should have stated that Cummings signed the waiver form while Cummings was still at Kihei Police Station, which is what in fact happened. *Id.* The MPD 103 Waiver of Rights form has a time of 10:11 p.m. on it, and the form the defendant signed giving his consent for officers to help him obtain his medication from his truck (the Consent Form) has the time of 10:14 p.m., all on March 15, 2020. ECF No. 75, Exhs. 7 and 9. Cummings has provided no evidence to the contrary. Regardless of the forms, Cabral's uncontested summary report from the evening also shows that Cummings provided his verbal consent to search the truck/orange bag for Cummings' medications. ECF No. 75, Exh. 8.

C. The Government's Argument

After reviewing Cummings' Motion more closely and taking into account defense counsel's representations regarding the Motion, Cummings appears to be arguing that the consent search broke the chain of custody and that law

enforcement may have somehow tampered with the contents of the truck on the night of Cummings' arrest. Cummings appears to be on a baseless fishing expedition for some unspecified type of officer wrongdoing. Thus, an evidentiary hearing on this matter does not appear to be necessary as there are no facts in dispute that would warrant suppression of the seized drugs. Regardless, at an evidentiary hearing on the Motion, the government will be prepared to offer witness testimony, specifically of Cabral, regarding the facts of the consent search for Cummings' medication.

Relatedly, the defendant has cited to no credible evidence of any illegal search. As Officer Cabral explains in the declaration, Cummings informed officers that he had medication in the truck and signed the MPD 103 Waiver of Rights form and the Consent Form on the evening of March 15, 2020, while he was still at the Kihei Police Station and before officers allowed the defendant to take his medication from the truck. Even if Cummings had signed the MPD 103 Waiver of Rights and Consent Forms *after* he obtained his medications from the truck, based just on Cummings' verbal consent, there would still not be any basis for suppression of the drugs seized the next day pursuant to the search warrant. The documentation is a useful tool for law enforcement to record the request/consent, but it is not legally required. Taking this hypothetical a step further, even if the

search for the medication in the orange bag was non-consensual, there is no legal basis for suppression of the seized drugs.²

II. GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS THE SEIZED DRUGS

A. Legal Issues

The Fourth Amendment requires that a search warrant describe with “particular[ity] ... the place to be searched and the persons or things to be seized.” U.S. Const. Fourth Amend. “The mere fact that evidence obtained by state officers, under a state warrant, based upon violations of state law, is used in a federal prosecution does not invoke the requirements of Rule 41. In such cases the standard is whether the warrant comports with the requirements of the Fourth Amendment.” *United States v. Crawford*, 657 F.2d 1041, 1046 (9th Cir. 1981).

The Supreme Court has stressed that suppression of evidence should be “our last resort, not our first impulse.” *Hudson v. Michigan*, 547 U.S. 586, 591 (2006). Suppression is appropriate only if a Fourth Amendment violation is the but-for cause of the government obtaining the challenged evidence. *United States v. Rosenow*, 50 F.4th 715, 736-37 (9th Cir. 2022).

² Furthermore, officers could have legally done an inventory search of the impounded truck. Such an inventory search of the impounded truck would not result in suppression of the seized drugs.

Moreover, “the possibility of a break in the chain of custody goes only to the weight of the evidence.” *United States v. Harrington*, 923 F.2d 1371, 1374 (9th Cir. 1991). In addition, the prosecution is not required to produce all persons who had possession of evidence. *Id.* If the evidence is an object connected with the commission of a crime, the proponent must also establish the chain of custody. *Id.* (citing *Gallego v. United States*, 276 F.2d 914, 917 (9th Cir. 1960)). The prosecution must introduce sufficient proof so that a reasonable juror could find that the items in the bag are in “substantially the same condition” as when they were seized. *Id.* The district court may admit the evidence if there is a “reasonable probability the article has not been changed in important respects.” *Id.* Further, in the absence of any evidence of tampering, a presumption exists that public officers “properly discharge[] their official duties.” *Id.*

In addition, the inevitable discovery exception permits the admission of evidence that ultimately or inevitably would have been discovered by lawful means. *Nix v. Williams*, 467 U.S. 431, 444 (1984). The government must prove that the relevant evidence would have been inevitably discovered by a preponderance of the evidence. *Id.*

Finally, a defendant is not entitled to an evidentiary hearing as a matter of right. See *United States v. Howell*, 231 F.3d 615, 620 (9th Cir. 2000) (“An evidentiary hearing on a motion to suppress need be held only when the moving

papers allege facts with sufficient definiteness, clarity, and specificity to enable the trial court to conclude that contested issues of fact exist.”) (citing *United States v. Walczak*, 783 F.2d 852, 857 (9th Cir. 1986), *United States v. Harris*, 914 F.2d 927, 933 (7th Cir. 1990), *United States v. Irwin*, 612 F.2d 1182, 1187 n.14 (9th Cir. 1980), and *United States v. Carrion*, 463 F.2d 704, 706 (9th Cir. 1972)); *United States v. Wardlow*, 951 F.2d 1115, 1116 (9th Cir. 1991) (the broad declaration of defense counsel asserting that the defense motion’s statement of facts was based upon discovery, rather than a declaration from an individual competent to testify, was not sufficient to require the granting of an evidentiary hearing); *United States v. Marcello*, 731 F.2d 1354, 1358 (9th Cir. 1984) (“[T]o mandate an evidentiary hearing, the challenger’s attack must be more than conclusory and must be supported by more than a desire to cross-examine.”).³

³ *United States v. Woodson*, No. CR 11-00531 WHA, 2011 WL 5884913, at *6 (N.D. Cal. Nov. 23, 2011) (denying a defense request for an evidentiary hearing because “mere refusal to accept the uncontradicted evidence does not create a material issue of fact”); *United States v. Walker*, 239 F. Supp. 3d 738, 739 (S.D.N.Y. 2017) (“While [an evidentiary hearing] might have been warranted if there were important credibility issues that could not be addressed from the paper record, the defendant has made no showing that that is the case here.”); *United States v. Martinez*, 992 F. Supp. 2d 322, 325–26 (S.D.N.Y. 2014) (“A defendant is not entitled to an evidentiary hearing in connection with a motion to suppress unless he can show that there are ‘contested issues of fact going to the validity of the search’” and in the absence of an affidavit “by someone with personal knowledge that disputed facts exist” an evidentiary hearing is unnecessary) (citations omitted).

B. Defendant's Motion Has No Support in Law or Fact

First, as discussed above, the defendant specified in his Motion that he is making a chain of custody argument. Chain of custody arguments go to the weight of the case and are appropriate for the jury to consider. *See Harrington*, 923 F.2d at 1374. The prosecution must introduce sufficient proof so that a reasonable juror could find that the items in the truck were in “substantially the same condition” as when they were seized. *Id.* The district court may admit the evidence if there is a “reasonable probability the article has not been changed in important respects.” *Id.*

Next, **in the absence of any evidence of tampering, a presumption exists that public officers “properly discharge[] their official duties.”** *Id.* (emphasis added). Cummings has presented no evidence in his Motion or the documents that he attached to demonstrate any potential tampering of any evidence prior to the execution of the search warrant on March 16, 2023. The typographical error in Cabral’s report alone is not sufficient or credible evidence of possible tampering with the seized drugs.

Here, the prosecution has sufficient evidence so that a reasonable juror could find that the drugs pertaining to Count 2 were in the same condition when they were seized on March 16, 2020, as when the truck was first impounded. There is no dispute that the truck was taken directly from the site of the arrest to the Kihei Police Station where it was impounded. *See* Stipulation of Evidence, ECF. No.

108. The government will also call witnesses at trial to testify regarding the chain of custody for the drugs once they were seized during the execution of the search warrant on March 16, 2020.

Moreover, the inevitable discovery doctrine would apply here. Even if law enforcement did look in the truck the night of March 15, 2020 without the defendant's consent, the defense has not explained what import that could have on suppression of the drugs that were seized the next day. The defendant has not argued that the officers found, moved, or removed the seized drugs from the truck the evening of March 15, 2023. It is clear, however, that law enforcement would have found the illegal drugs the next day regardless during the execution of the search warrant.

In addition, the automobile exception could apply here as well. Although officers obtained a search warrant and conducted a legal search within the parameters of their warrant, it is worth referencing the automobile exception. The automobile exception allows an officer to conduct a search of a vehicle if there is probable cause that it contains evidence of a crime. *United States v. Ross*, 456 U.S. 798, 799, 806-09 (1982). This exception extends to any part of the vehicle and any containers that might contain evidence of that particular crime. *Id.* at 821-24. It also applies even if the search is not conducted until after the vehicle has been immobilized or impounded, *Michigan v. Thomas*, 458 U.S. 259, 261 (1982)

(per curiam); *United States v. Garcia*, 205 F.3d 1182, 1187-88 (9th Cir. 2000); and even if containers are removed from the vehicle and then searched without unreasonable delay, *United States v. Johns*, 469 U.S. 478, 485-88 (1985).

Finally, based on the attached exhibits and for the reasons set forth above, the Court can rule as a matter of law that the defendant's argument is not a basis for suppression. Although there are some disputed facts, such as if and when and how the defendant asked for his medications, the Court can presume that officers properly discharged their duties due to the absence of any evidence of tampering.

Therefore, the government respectfully requests that the defendant's Motion be denied.

DATED: May 31, 2023, at Honolulu, Hawaii.

Respectfully Submitted,

CLARE E. CONNORS
United States Attorney
District of Hawaii

By Christine Olson
Christine Olson
REBECCA A. PERLMUTTER
Assistant U.S. Attorneys

Attorneys for Plaintiff
UNITED STATES OF AMERICA

CERTIFICATE OF SERVICE

I hereby certify that, on the dates and by the methods of service noted below, a true and correct copy of the foregoing was served on the following via email:

JOSEPH R. MOTTL, III

Counsel for defendant Lyle Rikio Cummings

DATED: May 31, 2023, at Honolulu, Hawaii.

/s/ *Christine Olson*
United States Attorney's Office
District of Hawaii

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Attorneys for Plaintiff
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. NO. 22-00023 DKW
)	
Plaintiff,	)	UNITED STATES' SUPPLEMENT
	)	TO ITS OPPOSITION
vs.	)	TO DEFENDANT'S MOTION IN
	)	LIMINE #1; ECF 109; HEARING
	)	EXHIBITS 9, 10, AND 11;
	)	CERTIFICATE OF
	)	SERVICE
LYLE RIKIO CUMMINGS,)	
)	
Defendant.	)	Hearing: June 7, 2023 at 1:30 p.m.
	)	Chief Judge Derrick K. Watson
)	

UNITED STATES' SUPPLEMENT TO ITS OPPOSITION TO DEFENDANT'S
MOTION IN LIMINE #1, ECF 109

By and through the undersigned, the United States hereby files this supplement to its opposition to Defendant Lyle Rikio Cummings' Motion in Limine #1 (the "Motion"), filed on May 24, 2023, ECF No. 109. At the final pretrial conference on May 24, 2023, the Court identified the Motion as a motion to suppress in substance that should have been filed by the March 24, 2023 deadline. The defendant raised new arguments in the late-filed Motion at issue. In response, within the limited time constraints, the government sought to investigate the newly raised factual arguments and allegations in the Motion, and filed an opposition to the Motion on May 31, 2023. ECF No. 113.

In that opposition, the government attached a declaration from former Maui Police Department (MPD) Officer Andrew Cabral, providing his best recollection of the relevant events from 2020, and indicating that there was an error in his prior report (Hearing Exh. 6) that he wrote close in time to the events of March 15, 2020, while he was an officer with MPD. *See* ECF No. 113, citing to ECF No. 75, Ex. 6 (Cabral Declaration); also attached as Exh. 4 for the June 7, 2023 evidentiary hearing. In an effort to confirm the facts from 2020, the government also asked MPD to provide any documents that would show what time Cummings left the Kihei Police Station and/or arrived at Wailuku Police Station on March 15, 2020, the night of his arrest, in an abundance of caution. In response to the government's request, on Thursday, June 1, 2023, the government received

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additional documentation from MPD regarding the defendant's movements on the night of his arrest. *See* Hearing Exhs. 9, 10, and 11. The government produced these newly obtained documents to defense counsel on the morning of June 5, 2023, after confirming their relevance, accuracy, and processing the documents for production.

Upon careful review of the newly obtained documents, the government anticipates that at an evidentiary hearing set for June 7, former MPD Sgt. Cabral (hereinafter, "Sgt. Cabral") will explain that he made a mistake in his recent declaration submitted to the Court. Sgt. Cabral has reviewed the recently obtained booking forms for Cummings on March 15, 2020 to further refresh his recollection of the timing of events, and determined that his original 2020 report regarding the events was correct. The government anticipates that Sgt. Cabral will explain that, consistent with the information in his report written close in time to the events at issue, Cummings signed the MPD Waiver of Rights Form (Hearing Ex. 5) and the MPD Consent to Search Form (Hearing Ex. 7) while Cummings was at the Wailuku Police Station and after Cummings had been allowed to get his medications from the truck at Kihei Police Station with the accompaniment of MPD officers.

Based on this information, the government is submitting this supplement to notify the Court and the defendant of the error in Cabral's declaration that the

government relied on in its opposition to the Motion. The government plans to have Sgt. Cabral testify at the June 7 evidentiary hearing so that he can explain the events the night of Cummings' arrest on March 15, 2020, and admit to the error in his declaration. The government also anticipates that Sgt. Cabral will also testify that, although he had Cummings sign the consent and waiver forms *after* the medication had been obtained from the truck, Cummings gave verbal consent *before* they allowed him to take his medication from the truck.

Verbal consent is all that is legally required, as stated in the government's original opposition brief to the Motion. The fact that the consent form was not signed until after the consent search for the medication does not warrant suppression of the drugs (*i.e.*, cocaine, cocaine base, and marijuana/THC) that were found in the truck and seized pursuant to the valid search warrant executed on March 16, 2020. The remainder of the facts, exhibits, and government arguments are not affected by the error in Cabral's declaration.

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Therefore, the government continues to respectfully request that the defendant's Motion be denied.

DATED: June 5, 2023, at Honolulu, Hawaii.

Respectfully Submitted,

CLARE E. CONNORS
United States Attorney
District of Hawaii

By Christine Olson
Christine Olson
REBECCA A. PERLMUTTER
Assistant U.S. Attorneys

Attorneys for Plaintiff
UNITED STATES OF AMERICA

Case 1:22-cr-00023-DKW Document 119 Filed 06/05/23 Page 6 of 6 PageID.595

CERTIFICATE OF SERVICE

I hereby certify that, on the dates and by the methods of service noted below, a true and correct copy of the foregoing was served on the following via email:

JOSEPH R. MOTTL, III

Counsel for defendant Lyle Rikio Cummings

DATED: June 5, 2023, at Honolulu, Hawaii.

/s/ *Christine Olson*
United States Attorney's Office
District of Hawaii

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Booking Number # : 2001127

Print Date : 05/30/2023 09:48

Booking Information

Booking Type :

Offender Tracking
Number :Active Status :

Status Reason : INACTIVE

Hold Reason :

Photo Status : Taken

FCCR Number :

Detention Location : WAILUKU

Process Control Number :

Booking District :

Police ID # :

Watch :

SID # :

Comments : Weekender: N

Race: H

Sex: M

Adult/Juvenile: A

Duration

Begin Date/Time : 03/15/2020 22:00

Secure Detention In :

Completed Date/Time :

Secure Detention Out :

Booking Charge Information**Charge Information :**

Charge Code : <707-0756-90Z> ELECTRONIC ENTRICEMENT OF A CHILD 1

Convicted Charge :

Parent Sentence :

Charge Type : STATE

Primary :

Charge Counts : 1

Modifier :

District # :

Offense Date :

Incident # : 20010287

Convicted :

Arrest # :

Active :

Docket Number :

Severity :

Judicial Status :

Charge OTN :

State Status :

Classification :

Charge Synopsis : ELECTRONIC ENTRICEMENT OF A CHILD 1 (Arrest ID: 20001686)

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Booking Number #: 2001127

Print Date : 05/30/2023 09:48

Bail/Bond Information :

Bail Amount Set : \$20,000.00

Bond Judge :

Bail/Bond Posted Amt : \$20,000.00

Bail Post Date : 03/17/2020 20:07

Bail Receipt # : 00350120

Bail/Bond Posted By # :

Balance Paid By Time
Served :

Bail Status : POSTED BOND

Bond Court Code :

Bond Type : SECURED BOND

Bond Court Date :

Charge Description :

Court Information :

Court Code : WAILUKU DISTRICT

Court Date : 04/23/2020 10:30

Court Judge :

Fine Amount :

Final Disposition : RELEASED ON BAIL

Disposition Date : 03/17/2020 00:00

Issued By Court :

Issued By Agency :

Issued By Court On :

Sentence Date :

Sentence Years :

Reporting Date :

Sentence Months :

Sentence Days :

Already Served Days :

Sentence :

Bound Over :Bound :

Date/Time :

Agency :

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Booking Number # : 2001127

Print Date : 05/30/2023 09:48

Involved Officers

Officer : SEPPALA, CONNOR A (30627)	Involvement : BOOKING
Other Officer :	Date/Time : 03/15/2020 22:00
Officer : SEPPALA, CONNOR A (30627)	Involvement : FINGERPRINTING
Other Officer :	Date/Time : 03/15/2020 22:00
Officer : SEPPALA, CONNOR A (30627)	Involvement : SEARCHING
Other Officer :	Date/Time : 03/15/2020 22:00
Officer : SEPPALA, CONNOR A (30627)	Involvement : PHOTOGRAPHED
Other Officer :	Date/Time : 03/15/2020 22:00
Officer : GILROY, HEATHER M (12687)	Involvement : RELEASED
Other Officer :	Date/Time : 03/17/2020 20:04

Properties**Property Information :**

Item Type : OTHER / MEDICATION	Action : RETURN
Quantity : 4	Cash Value : \$0.00
Inventoried By : FOGARTY, PATRICK E (15164)	Inventoried Date/Time : 03/15/2020 22:30
Witnessed By :	Storage Locker # : JAIL | WAILUKU | STORAGE CLOSET | 1 | A
Released By : FOGARTY, PATRICK E (15164)	
Released Date/Time : 03/17/2020 19:54	
Item Description : Property Description: OTHER / MEDICATION	
Detailed Description: 1	

Property Transfer :

Authorization On File :	Transfer To : CUMMINGS, LYLE R
Transfer Date/Time :	Relationship :

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Booking Number #: 2001127

Print Date : 05/30/2023 09:48

Release**Release Information :**Scheduled Release
Date/Time :

To Agency :

Release Reason :

Release To :

Actual Release 03/17/2020 20:04
Date/Time :

Relationship :

Release Notes :

Bail/Bond Information :

Bailed Amount Set :

Bail/Bond Status :

Bail Receipt Number :

Bond Amount :

Bail Posted On :

Bond Type :

Bail Posted By :

Booking Related Arrests

Arrest Number	Arrest Date/Time	Tracking Number	Case
20001686	03/15/2020 19:48		20010287

Booking Related Inmate Tracking

Inmate Number : 2001127

Attorney :

Intake Date/Time : 03/15/2020 22:00

Scheduled Date/Time :

Offender Tracking
Number :Actual Release 03/17/2020 20:04
Date/Time :

Arrestee Information : CUMMINGS, LYLE R

Event Search

Event Date Event Time
 03/15/20 19:57:27

Event Number: P2003006012

<u>Agency</u>	<u>Type</u>	<u>ESZ</u>	<u>Area</u>	<u>Group</u>
MPD	SEXA	51	644	P6

Location: Apt , Mun KIH
 Location Info:

Comments:
 Xstreets: KILOHANA DR
 S KIHEI RD

Caller Name:
 Caller Addr:
 Caller Phone: Phone2:
 Call Source:

Remarks

** LOI search completed at 03/15/20 19:57:27
 1K12 AMIC FROM KILOHANA
 ** LOI search completed at 03/15/20 19:57:39
 ** LOI search completed at 03/15/20 19:57:47
 ** Event Location changed from "2201 PIILANI HWY
 KIH: @KPD PIILANI HWY" to "KILOHANA
 DR/PIILANI HWY KIH: alias KILOHANA DR/HWY 31
 KIH" at: 03/15/20 19:57:47
 ** >>> on terminal: cadlahaina
 ** Case number PC20010287 has been assigned to event
 P2003006012
 ** >>> on terminal: cadlahaina
 ** LOI search completed at 03/15/20 20:00:16
 ** Event Location changed from "KILOHANA
 DR/PIILANI HWY KIH: alias KILOHANA DR/HWY 31
 KIH" to "2201 PIILANI HWY KIH: @KPD PIILANI
 HWY" at: 03/15/20 20:00:16
 ** >>> on terminal: cadlahaina
 ** LOI search completed at 03/15/20 20:00:39



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Remarks

** Event Location changed from "2201 PIILANI HWY KIH: @KPD PIILANI HWY" to "KILOHANA DR/S KIHEI RD KIH" at: 03/15/20 20:00:39
 ** >>> on terminal: cadlahaina
 1K25 NEED IMPOUND TOW TO D6 LAJ777
 CALLING MAUI TOW
 2 ATTEMPS NO ANSWER
 KITS ER ETA 25 MIN
 ** Disposition code changed from: RTF to: AIC
 ** >>> on terminal: cadlahaina
 ** LOI search completed at 03/15/20 21:31:38
 J12, TRC D1
 Y2 - AMIC TO D6
 ** LOI search completed at 03/15/20 23:38:08
 Y2 - 10-9 D6
 ** Disposition code changed from: AIC to: MIC
 ** >>> on terminal: cadlahaina
 Y2: AMIC TO D1
 ** LOI search completed at 03/15/20 23:53:40
 ** Cross Referenced to Event # P2003006275 at: 03/16/20
 13:07:55
 ** >>> on terminal: cademsfire

Times:

<u>Add</u>	<u>Dispatch</u>	<u>Arrive</u>	<u>Close</u>	<u>Closing ID</u>	<u>C Terminal</u>	<u>Comments</u>
19:57:27	19:57:31	19:57:32	01:00:19	15215	cadlahaina	

<u>Case Number</u>	<u>Event Number</u>
--------------------	---------------------

PC20010287	P2003006 012
------------	-----------------

<u>Units</u>	<u>Car ID</u>
--------------	---------------

1A33	714
1J12	
1K12	
1K25	
Y2	

dispositionMIC

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5/30/2023 09:57:35

Event_Search

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CUMMINGS_000901

Event Chronology

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Summary

Event Number/Type	Location	First Call
P2003006012 SEXA (SEX OFFENSES/REPORT)	KILOHANA DR/S KIHEI RD KIH Cross Streets KILOHANA DR/S KIHEI RD	
Assigned Units	Dispositions	Event Dates
	RTF, AIC, MIC	Started 3/15/2020 7:57:07 PM Created 3/15/2020 7:57:27 PM First Dispatch 3/15/2020 7:57:31 PM First Enroute 3/15/2020 10:45:51 PM First Arrive 3/15/2020 7:57:32 PM Closed 3/16/2020 1:00:19 AM
Case Numbers	Cross References	
PC20010287	P2003006275	

Date/Time	Operator	Terminal	Details
3/15/2020 7:57:27 PM	POMEROY, JASON C (15156)	cadlahaina	MPD event P2003006012 created at 2201 PIILANI HWY KIH: @KPD PIILANI HWY Cross Street KANANI RD Cross Street ALANUI KE ALII Type SEXA (SEX OFFENSES/REPORT) Dispatch Group P6 Priority 2 Beat 643 Alarm Level 1 New Comment 1K12 AMIC FROM KILOHAVA
3/15/2020 7:57:27 PM	POMEROY, JASON C (15156)	cadlahaina	Unit Action Unit 1K12 Agency MPD Group PO Action DP 2201 PIILANI HWY KIH: @KPD PIILANI HWY
3/15/2020 7:57:31 PM	POMEROY, JASON C (15156)	cadlahaina	Event Updated Total Assigned Units 1
3/15/2020 7:57:31 PM	POMEROY, JASON C (15156)	cadlahaina	Event Updated First Unit Dispatched Time 3/15/2020 7:57:31 PM Primary Employee Id 11545 Primary Unit Id 1K12
3/15/2020 7:57:31 PM	POMEROY, JASON C (15156)	cadlahaina	Event Updated First Unit Arrived Time 3/15/2020 7:57:32 PM
3/15/2020 7:57:32 PM	POMEROY, JASON C (15156)	cadlahaina	Unit Action Unit 1K12 Agency MPD Group PO Action OS 2201 PIILANI HWY KIH: @KPD PIILANI HWY
3/15/2020 7:57:39 PM	POMEROY, JASON C (15156)	cadlahaina	Unit Action Unit 1K12 Agency MPD Group PO Action TR AMIC TO D6
3/15/2020 7:57:39 PM	POMEROY, JASON C (15156)	cadlahaina	Event Updated First Unit Transported Time 3/15/2020 7:57:39 PM
3/15/2020 7:57:47 PM	POMEROY, JASON C (15156)	cadlahaina	New Call
3/15/2020 7:57:47 PM	POMEROY, JASON C (15156)	cadlahaina	Event Updated Location KILOHANA DR/PIILANI HWY KIH: alias KILOHANA DR/HWY 31 KIH Beat 644 Esz 51 AgencyEventData_MeuInitialTycode Cross Street1 KILOHANA DR Cross Street2 PIILANI HWY Has Loi Data False Latitude 20.7057538282731 Longitude -156.434684307313
3/15/2020 8:00:05 PM	POMEROY, JASON C (15156)	cadlahaina	Case Number PC20010287 Assigned
3/15/2020 8:00:05 PM	POMEROY, JASON C (15156)	cadlahaina	Updated Call
3/15/2020 8:00:16 PM	POMEROY, JASON C (15156)	cadlahaina	Event Updated Location 2201 PIILANI HWY KIH: @KPD PIILANI HWY Beat 643 Esz 50 Cross Street1 KANANI RD Cross Street2 ALANUI KE ALII Has Loi Data True Latitude 20.7270432171011 Longitude -156.440736113725
3/15/2020 8:00:16 PM	POMEROY, JASON C (15156)	cadlahaina	Updated Call
3/15/2020 8:00:39 PM	POMEROY, JASON C (15156)	cadlahaina	Event Updated Location KILOHANA DR/S KIHEI RD KIH Beat 644 Esz 51 Cross Street1 KILOHANA DR Cross Street2 S KIHEI RD Has Loi Data False Latitude 20.7023556915372 Longitude -156.444778387917
3/15/2020 8:00:45 PM	POMEROY, JASON C (15156)	cadlahaina	Unit Action Unit 1K25 Agency MPD Group PO Action DP KILOHANA DR/S KIHEI RD KIH

3/15/2020 8:00:45 PM POMEROY, JASON C (15156) cadlahaina Event Updated
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 3/15/2020 8:00:46 PM POMEROY, JASON C (15156) cadlahaina Total Assigned Units 2
 Unit Action
 Unit 1K25 Agency MPD Group PO Action OS
 KILOHANA DR/S KIHEI RD KIH
 New Comment
 1K25 NEED IMPOUND TOW TO D6 LAJ777
 Unit Action
 Unit 1K12 Agency MPD Group PO Action TC
 AMIC TO D6
 Event Updated
 First Unit Transport Arrived Time 3/15/2020 8:03:46 PM
 Unit Action
 Unit 1K12 Agency MPD Group PO Action ~
 AMIC TO D6
 New Comment
 CALLING MAUI TOW
 New Comment
 2 ATTEMPTS NO ANSWER
 New Comment
 KITS ER ETA 25 MIN
 Unit Action
 Unit 1K25 Agency MPD Group PO Action ~
 KILOHANA DR/S KIHEI RD KIH
 Unit Action
 Unit 1K12 Agency MPD Group PO Action CU
 AMIC TO D6
 Unit Action
 Unit 1K25 Agency MPD Group PO Action CU
 KILOHANA DR/S KIHEI RD KIH
 Unit Action
 Unit 1J12 Agency MPD Group PO Action DP
 KILOHANA DR/S KIHEI RD KIH
 Event Updated
 Total Assigned Units 3
 Unit Action
 Unit 1J12 Agency MPD Group PO Action OS
 KILOHANA DR/S KIHEI RD KIH
 Unit Action
 Unit 1J12 Agency MPD Group PO Action TR
 AMIC TO D1
 Unit Action
 Unit 1J12 Agency MPD Group PO Action ~
 AMIC TO D1
 New Comment
 J12, TRC D1
 Unit Action
 Unit 1J12 Agency MPD Group PO Action TC
 AMIC TO D1
 Unit Action
 Unit 1J12 Agency MPD Group PO Action ~
 AMIC TO D1
 Unit Action
 Unit 1A33 Agency MPD Group P1 Action DP
 KILOHANA DR/S KIHEI RD KIH
 Mileage 100370
 Event Updated
 Total Assigned Units 4
 Event Updated
 First Unit Entered Time 3/15/2020 10:45:51 PM
 Unit Action
 Unit 1A33 Agency MPD Group P1 Action ER
 KILOHANA DR/S KIHEI RD KIH
 Mileage 100370
 Unit Action
 Unit 1J12 Agency MPD Group PO Action AV
 Event Updated
 Total Assigned Units 3
 Unit Action
 Unit 1A33 Agency MPD Group P1 Action ~
 KILOHANA DR/S KIHEI RD KIH
 Unit Action
 Unit 1A33 Agency MPD Group P1 Action UU
 Mileage 100370
 Unit Action
 Unit 1A33 Agency MPD Group P1 Action UE
 Mileage 100370
 Unit Action
 Unit 1A33 Agency MPD Group P1 Action UC
 KILOHANA DR/S KIHEI RD KIH

3/15/2020 11:10:42 PM	WOLFF, KEVIN M (15029)	cademsfire	Unit Action Mileage 100370
3/15/2020 11:10:42 PM	WOLFF, KEVIN M (15029)	cademsfire	Unit Action Unit 1A33 Agency MPD Group P1 Action UC Mileage 100370
3/15/2020 11:10:42 PM	WOLFF, KEVIN M (15029)	cademsfire	Event Updated Total Assigned Units 2
3/15/2020 11:37:57 PM	ADOLPHO, TORI M (15215)	cadlahaina	Unit Action Unit Y2 Agency MPD Group PO Action DP KILOHANA DR/S KIHEI RD KIH
3/15/2020 11:37:57 PM	ADOLPHO, TORI M (15215)	cadlahaina	Event Updated Total Assigned Units 3
3/15/2020 11:37:58 PM	ADOLPHO, TORI M (15215)	cadlahaina	Unit Action Unit Y2 Agency MPD Group PO Action OS KILOHANA DR/S KIHEI RD KIH
3/15/2020 11:38:03 PM	ADOLPHO, TORI M (15215)	cadlahaina	New Comment Y2 - AMIC TO D6
3/15/2020 11:38:07 PM	ADOLPHO, TORI M (15215)	cadlahaina	Unit Action Unit Y2 Agency MPD Group PO Action TR AMIC TO D6
3/15/2020 11:40:48 PM	ADOLPHO, TORI M (15215)	cadlahaina	Unit Action Unit Y2 Agency MPD Group PO Action TC AMIC TO D6
3/15/2020 11:40:53 PM	ADOLPHO, TORI M (15215)	cadlahaina	New Comment Y2 - 10-9 D6
3/15/2020 11:42:27 PM	ADOLPHO, TORI M (15215)	cadlahaina	Disposition Type MIC Assigned Case Number PC20010287
3/15/2020 11:42:48 PM	SYSTEM	cadcalltaker1	Unit Action Unit Y2 Agency MPD Group PO Action ~ AMIC TO D6
3/15/2020 11:53:31 PM	ADOLPHO, TORI M (15215)	cadlahaina	New Comment Y2: AMIC TO D1
3/15/2020 11:53:40 PM	POMEROY, JASON C (15156)	db_server	Updated Call
3/15/2020 11:53:40 PM	ADOLPHO, TORI M (15215)	cadlahaina	Unit Action Unit Y2 Agency MPD Group PO Action TR AMIC TO D1
3/16/2020 12:12:24 AM	WOLFF, KEVIN M (15029)	cademsfire	Unit Action Unit Y2 Agency MPD Group PO Action TC AMIC TO D1
3/16/2020 12:14:24 AM	SYSTEM	cademsfire	Unit Action Unit Y2 Agency MPD Group PO Action ~ AMIC TO D1
3/16/2020 12:50:46 AM	WOLFF, KEVIN M (15029)	cademsfire	Unit Action Unit Y2 Agency MPD Group PO Action AV
3/16/2020 12:50:46 AM	WOLFF, KEVIN M (15029)	cademsfire	Event Updated Total Assigned Units 2
3/16/2020 1:00:17 AM	ADOLPHO, TORI M (15215)	cadlahaina	Unit Action Unit 1K12 Agency MPD Group PO Action AV
3/16/2020 1:00:17 AM	ADOLPHO, TORI M (15215)	cadlahaina	Event Updated Total Assigned Units 1
3/16/2020 1:00:19 AM	ADOLPHO, TORI M (15215)	cadlahaina	Unit Action Unit 1K25 Agency MPD Group PO Action AV
3/16/2020 1:00:19 AM	ADOLPHO, TORI M (15215)	cadlahaina	Event Updated Total Assigned Units 0
3/16/2020 1:00:19 AM	ADOLPHO, TORI M (15215)	cadlahaina	Event Closed
3/16/2020 1:00:19 AM	ADOLPHO, TORI M (15215)	cadlahaina	Event Updated Rms Transfer Time 3/16/2020 1:00:19 AM
3/16/2020 1:07:55 PM	ROBELLO, LORELEE (11297)	N cademsfire	Cross-Referenced to P2003006275

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Inmate Tracking Report

Inmate Number # : 2001127

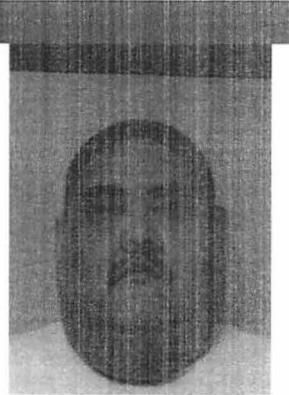
ORI : HI0050000

Print Date : 05/30/2023 10:24

INCARCERATED

Inmate Information

Inmate Number :	2001127	DOB :	08/09/1973
Inmate Date/Time :	03/15/2020 22:00	Height :	6'4"
Last Name :	CUMMINGS	Weight :	400
First Name :	LYLE	SBI # :	
Middle Name :	R	SID # :	A6031347
Linked Name :	CUMMINGS, LYLE R INDIVIDUAL	Fingerprinted :	<input checked="" type="checkbox"/>
Primary Address :	24 NENA ST, HALIIMAILE, HI, 96768	DNA :	<input checked="" type="checkbox"/>
Title :		Ethnicity :	NON-HISPANIC
Suffix :		Gender :	MALE
Citizenship :	UNITED STATES	Race :	HAWAIIAN
Residence Status :	RESIDENT OF MAUI COUNTY	FBI # :	582408HD5

**Booking**

Linked Booking : 2001127 Linked Juvenile Booking :

Attorney

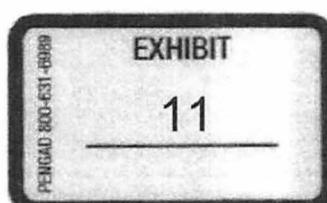
Name :	Work Phone :
Primary Address :	Other Phone :

Emergency Contact

Name :	Relationship :
Phone :	

Intake Information

Offender Tracking Number :	Solitary : <input checked="" type="checkbox"/>
Age :	Suicide : <input checked="" type="checkbox"/>
Security :	At Risk : <input checked="" type="checkbox"/>
Comments : Weekender: N Race: H	



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Inmate Number # : 2001127

Print Date : 05/30/2023 10:24

INCARCERATED

Sex: M
Adult/Juvenile: A**Current Status**Weekender :

Status Date/Time :

Status :

Location : #.6 | 01

Temporary Location :

Holds

Entered By : WRIGHT, JAMIE P (12115)

Entered Date/Time : 03/16/2020 04:46

Reason Held : CID

Released By : CABRAL, ANDREW P. (15222)

Release Date/Time : 03/17/2020 20:08

Released Reason :

Housing Logs

Transfer Date/Time	Housing	Status Date/Time	Status
03/15/2020 22:00	MAIN | 1		
03/15/2020 23:38	#.6 | 02		
03/17/2020 19:12	#.6 | 01		

Inmate Number # : 2001127

Print Date : 05/30/2023 10:24

INCARCERATED

Housing/Transfers**Transfer/Movement Information :**

Transfer Date/Time :	03/15/2020 22:00	Status :
Status Date/Time :		Transferring Officer :
Arrival Date/Time :		Receiving Officer :
Departure Mileage :		Arrival Mileage :
Responsible Court :		Responsible County :
Comments :		

Transfer/Movement Location :

Housing :	MAIN | 1	Outside Address :
Outside Location :		

Transfer/Movement Information :

Transfer Date/Time :	03/15/2020 23:38	Status :
Status Date/Time :		Transferring Officer :
Arrival Date/Time :		Receiving Officer :
Departure Mileage :		Arrival Mileage :
Responsible Court :		Responsible County :
Comments :		

Transfer/Movement Location :

Housing :	#.6 | 02	Outside Address :
Outside Location :		

Transfer/Movement Information :

Transfer Date/Time :	03/17/2020 19:12	Status :
Status Date/Time :		Transferring Officer :

Inmate Number # : 2001127

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Arrival Date/Time :	Receiving Officer :
Departure Mileage :	Arrival Mileage :
Responsible Court :	Responsible County :
Comments :	

Transfer/Movement Location :

Housing : #.6 | 01	Outside Address :
Outside Location :	

Inmate Property**Inmate Property :**

Item Type : OTHER / MEDICATION	Action : RETURN
Quantity : 4	Cash Value : 0.0000
Inventoried By : FOGARTY, PATRICK E (15164)	Inventoried Date/Time : 03/15/2020 22:30
Witnessed By :	Storage Locker # : JAIL | WAILUKU | STORAGE CLOSET | 1 | A
Released By : FOGARTY, PATRICK E (15164)	Storage Location :
Released Date/Time : 03/17/2020 19:54	
Item Description : Property Description: OTHER / MEDICATION	
Detailed Description: 1	

Property Transfer :

Authorization On File :	Transfer To : CUMMINGS, LYLE R INDIVIDUAL
Transfer Date/Time :	Relationship :

Jail Logs

Log Date/Time	Log Category	Comments
03/17/2020 20:04		ILEADS EVENT TYPE : RELS LOCATION : OTHER
03/17/2020 20:08		ILEADS EVENT TYPE : BOND
03/17/2020 20:07		ILEADS EVENT TYPE : BOND
03/17/2020 20:07		ILEADS EVENT TYPE : BOND

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Inmate Number # : 2001127

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03/17/2020 19:30	ILEADS EVENT TYPE : PHON LOCATION : WKU
03/17/2020 19:12	ILEADS EVENT TYPE : INMT
03/17/2020 05:24	ILEADS EVENT TYPE : IME LOCATION : WKU
03/16/2020 05:43	ILEADS EVENT TYPE : JQME LOCATION : WKU
03/16/2020 04:46	ILEADS EVENT TYPE : HOLD
03/16/2020 00:35	ILEADS EVENT TYPE : JQSU
03/16/2020 00:35	ILEADS EVENT TYPE : JQSU
03/15/2020 23:38	ILEADS EVENT TYPE : INMT
03/15/2020 22:38	ILEADS EVENT TYPE : MIGC LOCATION : WKU
03/15/2020 22:08	ILEADS EVENT TYPE : JQME
03/15/2020 22:00	ILEADS EVENT TYPE : INMT
03/15/2020 22:00	ILEADS EVENT TYPE : BOOK

Sentence - BookingCharge Code : ELECTRONIC ENTICEMENT OF A
CHILD 1 (342014)

Charge Type : STATE

Convicted Charge :

Years :

Months :

Days:

Active : **Release Information**

Scheduled Date/Time :

Actual Release 03/17/2020 20:04
Date/Time :

Reason :

To Agency :

To Other :

Relationship :

Comments :

Inmate Number # : 2001127

Print Date : 05/30/2023 10:24

INCARCERATED

Medical Questionnaire		
MEDICAL	Observation of deformities	NO
MEDICAL	Are you currently under a physician's care? If yes, explain.	Dr. Seraguchi in Wailuku.
MEDICAL	Are you currently pregnant? If yes, how many months?	
MEDICAL	Are you currently taking medications? If yes, list type(s), dosage(s), frequency and for what condition.	Takes medication for diabetes, and high blood pressure. Does not know the names - no prescription with him.
MEDICAL	Do you suffer from Hepatitis?	NO
MEDICAL	Do you suffer from shortness of breath?	NO
MEDICAL	Do you suffer from abdominal pains?	NO
MEDICAL	Do you suffer from high blood pressure?	YES
MEDICAL	Do you suffer from tuberculosis?	NO
MEDICAL	Do you suffer from schizophrenia?	NO
MEDICAL	Do you suffer from alcohol addiction?	NO
MEDICAL	Do you suffer from epilepsy or blackouts?	NO
MEDICAL	Do you suffer from heart disease?	NO
MEDICAL	Do you suffer from chest pains?	NO
MEDICAL	Do you suffer from ulcers?	NO
MEDICAL	Do you suffer from major depression?	NO
MEDICAL	Do you suffer from venereal disease?	NO
MEDICAL	Do you suffer from diabetes?	YES
MEDICAL	Do you suffer from drug addiction?	NO

Inmate Number #: 2001127

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MEDICAL	Do you suffer from asthma?	NO
MEDICAL	Do you suffer from bipolar disease?	NO
MEDICAL	Do you suffer from any other medical condition?	
MEDICAL	Have you ever attempted suicide? If yes, when, how and why?	
MEDICAL	Have you ever considered suicide? If yes, when and why?	
MEDICAL	Are you now or have you ever been treated for mental health or emotional problems? If yes, when?	
MEDICAL	Were you treated as an inpatient?	NO
MEDICAL	Were you treated as an outpatient?	NO
MEDICAL	What condition were you treated for?	
MEDICAL	Have you recently experienced a significant loss (job, death of a family member or close friend, relationship, etc.) If yes, explain.	
MEDICAL	Has a family member or close friend ever attempted to commit suicide? If yes, explain.	
MEDICAL	Do you feel that there is nothing to look forward to in the immediate future? (Expressing helplessness or hopelessness). If yes, explain.	Feels Helpless due to current situation.
MEDICAL	Are you thinking of killing yourself? If yes, explain.	
MEDICAL	Observation of assaultive behavior?	NO
MEDICAL	Observation of loud or obnoxious behavior?	NO
MEDICAL	Observation of any noticeable scars?	NO
MEDICAL	Observation of any bizarre behavior?	NO
MEDICAL		NO

Inmate Number #: 2001127

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Observation of alcohol or drug withdrawal?		
MEDICAL	Observation of unusual suspiciousness?	NO
MEDICAL	Observation of hearing or seeing voices or visions?	NO
MEDICAL	Observation of other signs of depression?	
MEDICAL	Observation of crying or tearful?	NO
MEDICAL	Observation of being confused?	NO
MEDICAL	Observation of being uncooperative?	NO
MEDICAL	Observation of being passive?	YES
MEDICAL	Observation of being intoxicated?	NO
MEDICAL	Observation of being scared?	NO
MEDICAL	Observation of being incoherent?	NO
MEDICAL	Observation of being embarrassed?	NO
MEDICAL	Was detainee a medical, mental or suicide risk during any prior arrest or confinement with the Maui Police Department?	
MEDICAL	Observation of pain or injury? If YES, explain	
SUICIDE	Observation of Assaultive Behavior?	NO
SUICIDE	Observation of Assaultive Behavior?	NO
SUICIDE	Does the officer believe the detainee is a medical, mental or suicide risk now?	
SUICIDE	Does the officer believe the detainee is a medical, mental or suicide risk now?	
SUICIDE	Observation of any noticeable scars?	NO

Inmate Number #: 2001127

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SUICIDE	Observation of any noticeable scars?	NO
SUICIDE	Observation of bizarre behavior?	NO
SUICIDE	Observation of bizarre behavior?	NO
SUICIDE	Observation of alcohol or drug withdrawal?	NO
SUICIDE	Observation of alcohol or drug withdrawal?	NO
SUICIDE	Observation of unusual suspiciousness?	NO
SUICIDE	Observation of unusual suspiciousness?	NO
SUICIDE	Observation of hearing or seeing voices or visions?	NO
SUICIDE	Observation of hearing or seeing voices or visions?	NO
SUICIDE	Observation of pain or injury? If YES, explain	
SUICIDE	Observation of pain or injury? If YES, explain	
SUICIDE	Observation of other signs of depression?	
SUICIDE	Observation of other signs of depression?	
SUICIDE	Observation of crying or tearful?	NO
SUICIDE	Observation of crying or tearful?	NO
SUICIDE	Observation of confusion?	NO
SUICIDE	Observation of confusion?	NO
SUICIDE	Observation of being uncooperative?	NO
SUICIDE	Observation of being uncooperative?	NO
SUICIDE		NO

Inmate Number # : 2001127

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	Observation of loud or obnoxious behavior?	
SUICIDE	Observation of loud or obnoxious behavior?	NO
SUICIDE	Observation of being passive?	YES
SUICIDE	Observation of being passive?	YES
SUICIDE	Observation of being intoxicated?	NO
SUICIDE	Observation of being intoxicated?	NO
SUICIDE	Observation of being scared?	NO
SUICIDE	Observation of being scared?	NO
SUICIDE	Observation of being incoherent?	NO
SUICIDE	Observation of being incoherent?	NO
SUICIDE	Observation of being embarrassed?	NO
SUICIDE	Observation of being embarrassed?	NO
SUICIDE	Observation of body deformities?	
SUICIDE	Observation of body deformities?	

Officer Information

Officer : SEPPALACONNOR A (30627) Unit :

Involvement : BOOKING

Officer : SEPPALACONNOR A (30627) Unit :

Involvement : FINGERPRINTING

Officer : SEPPALACONNOR A (30627) Unit :

Involvement : SEARCHING

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Officer : SEPPALACONNOR A (30627) **Unit :**

Involvement :

Officer : SEPPALACONNOR A (30627) **Unit :**

Involvement : SCREENING

Officer : CABRALANDREW P. (15222) **Unit :**

Involvement : SCREENING

Officer : GILROYHEATHER M (12687) **Unit :**

Involvement :

INSTRUCTION NO. 11

You have heard testimony from three witnesses, Homeland Security Investigations Resident Agent in Charge Ryan Faulkner, Maui Police Department Detective Matthew Bigoss, and Maui Police Department Criminalist Brandi Kaoni, who testified about their opinions and the reasons for those opinions. The opinion testimony from these witnesses is allowed because of the specialized knowledge, skill, experience, training, or education of those witnesses.

Such opinion testimony should be judged like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's knowledge, skill, experience, training, or education, the reasons given for the opinion, and all the other evidence in the case.

INSTRUCTION NO. 10

The testimony of a law enforcement officer should be weighed and considered, and credibility determined, in the same way as that of any other witness. A law enforcement officer's testimony is not entitled to any greater weight, nor should you consider it more credible, than any other witness' testimony simply because it was given by a law enforcement officer.

08:56AM 1 having been conclusively proved.

08:56AM 2 "INSTRUCTION NO. 10

08:56AM 3 "The testimony of a law enforcement officer should be
08:56AM 4 weighed and considered, and credibility determined, in the same
08:56AM 5 way as that of any other witness. A law enforcement officer's
08:56AM 6 testimony is not entitled to any greater weight, nor should you
08:56AM 7 consider it to be more credible than that of any other witness
08:56AM 8 simply because it was given by a law enforcement officer.

08:56AM 9 "INSTRUCTION NO. 11

08:56AM 10 "You have heard testimony from three witnesses,
08:56AM 11 Homeland Security Investigations Resident Agent in Charge Ryan
08:57AM 12 Faulkner, Maui Police Department Detective Matthew Bigoss and
08:57AM 13 Maui Police Department Criminalist Brandi Kaoni, who testified
08:57AM 14 about their opinions and the reason for their opinions. The
08:57AM 15 opinion testimony from these witnesses is allowed because of
08:57AM 16 the specialized knowledge, skill, experience, training, or
08:57AM 17 education of these witnesses.

08:57AM 18 "Such opinion testimony should be judged like that of
08:57AM 19 any other testimony. You may accept it, you may reject it, and
08:57AM 20 you may give it as much weight as you think it deserves
08:57AM 21 considering the witness's knowledge, skill, experience,
08:57AM 22 training or education, the reason given for the opinions, and
08:57AM 23 all the other evidence in this case.

08:57AM 24 "INSTRUCTION NO. 12

08:57AM 25 "You have heard evidence of the defendant's statements

03:39PM 1 A From my training and experience, that would be a smoking
03:39PM 2 emoji reference to smoking marijuana.

03:39PM 3 Q I'd like to talk a little bit more about your training and
03:39PM 4 experience here going back to how you said you have significant
03:39PM 5 training and experience in child exploitation cases.

03:39PM 6 Why does Mr. Cummings offer her marijuana at this
03:39PM 7 point in your training and experience?

03:39PM 8 A In order to persuade and to coax, and to entice her to
03:39PM 9 gain her favor.

03:39PM 10 Q Is that something that's common in your experience in
03:39PM 11 investigating child exploitation cases?

03:39PM 12 A Yes.

03:39PM 13 Q Can you expand a little bit on that?

03:39PM 14 A I'm sorry. Can you repeat the question?

03:39PM 15 Q Could you expand a little bit on that?

03:39PM 16 A On which part?

03:39PM 17 Q How it's common in child exploitation cases to offer
03:39PM 18 marijuana or other drugs?

03:39PM 19 A That would be something that would be common in that for
03:39PM 20 an adult to offer various drugs to minors in order to gain
03:40PM 21 favor, to groom, to manipulate, to induce, to coax them.

03:40PM 22 Q Thank you.

03:40PM 23 Please continue reading.

03:40PM 24 A "Cummings. So should I come down or you can't come out if
03:40PM 25 I come down?..? Lol why you don't answer?"

03:40PM 1 "Kiana. My girlfriend is over rn. Watchin a movie."

03:40PM 2 Q Let me stop you.

03:40PM 3 So in this point in the conversation DuckFat34 we'll

03:40PM 4 say, has asked you repeatedly to meet in person.

03:40PM 5 Why are you not agreeing at this point to meet in

03:40PM 6 person?

03:40PM 7 A I'm still understanding his intent and still building a

03:40PM 8 rapport with him.

03:40PM 9 Q Thank you.

03:41PM 10 Please continue.

03:41PM 11 A "My girlfriend is over rn. Watchin a movie."

03:41PM 12 "Cummings. Send a pic of you two."

03:41PM 13 "Kiana. You haven't even sent me one pic yet."

03:41PM 14 Q Can I ask you, why did you say that?

03:41PM 15 A Because he hasn't sent me a picture of himself and I've

03:41PM 16 sent two pictures of Kiana.

03:41PM 17 Q Okay.

03:41PM 18 A "Cummings." Then picture of him from his Skout profile.

03:41PM 19 "Cummings. My profile picture.

03:41PM 20 The next image on the top is stacks of \$100 bills.

03:41PM 21 "Cummings. Is your gf going home soon?.?"

03:41PM 22 "Kiana. I already saw the profile pic." Money .

03:42PM 23 emojis. "How can I get one of those stacks?"

03:42PM 24 "Cummings. When you ride with me. Is tonight gonna

03:42PM 25 happen for us or just talk."

03:42PM 1 "Kiana. What you gonna do. We."

03:42PM 2 "Cummings. Come down pick you up go by the beach,

03:42PM 3 listen music talk n hang out for a few hours.

03:42PM 4 "Kiana. So just talk wit you and I get a stack?"

03:42PM 5 "Cummings." Few hundred emojis. You know you not

03:42PM 6 going, yes or no or we just do tomorrow either Shops of Wailea,

03:42PM 7 outlets in Lahaina or Victoria Secret."

03:42PM 8 "What, I not going." "Kiana. U didn't even send me a

03:43PM 9 pic yet."

03:43PM 10 "Cummings. What pic you like?"

03:43PM 11 "Kiana. Whatever."

03:43PM 12 Q Let me stop you there.

03:43PM 13 Why did you say that, because he did send you a

03:43PM 14 picture? Why did you say you didn't send me one when he

03:43PM 15 already did?

03:43PM 16 A The picture that he had sent was the same one that had

03:43PM 17 been in the Skout profile and the other pictures were just of

03:43PM 18 money. They weren't of what he represented to be him.

03:43PM 19 Q So you were trying to get a picture that was different

03:43PM 20 from the profile picture?

03:43PM 21 A Yes.

03:43PM 22 Q Okay.

03:43PM 23 A "Cummings. You not going come with me.. you just talking

03:43PM 24 like you like go. Lol you want me come get you tonight??

03:43PM 25 "Kiana. Pic of u not from profile."

03:43PM 1 "Cummings. Good night."

03:43PM 2 "Kiana. I not playin games. Why can't you just send

03:44PM 3 a pic.. all is former profile."

03:44PM 4 "Cummings. I know more any."

03:44PM 5 "Kiana. You like see pics of me but you don't have

03:44PM 6 any??" Upside down emoji. Crying emoji.

03:44PM 7 Q Let me stop you here.

03:44PM 8 Could you just note the date and time of the next

03:44PM 9 entry?

03:44PM 10 A Next entry is at 11:01 a.m. the following morning. The

03:44PM 11 last one ended around midnight.

03:44PM 12 Q How many days -- what's the -- in the next entry, how many

03:44PM 13 days have you been chatting already?

03:44PM 14 A From the initial contact on the 13th through 14th at 2:53.

03:44PM 15 Q So this was the beginning of the third day; is that right?

03:44PM 16 A Correct.

03:44PM 17 Q Okay.

03:44PM 18 A "Cummings. Good morning."

03:45PM 19 "Kiana." Waving emoji. Yawning emoji.

03:45PM 20 "Cummings. You still sleeping."

03:45PM 21 Q Let me stop you again so I can ask you a question.

03:45PM 22 Why did you wait for Cummings to reach out to you the

03:45PM 23 next morning? Why didn't you initiate the conversation on

03:45PM 24 March 15th?

03:45PM 25 A Didn't have a specific reason in the morning time. He's

03:45PM 1 the one that just had initiated a conversation.

03:45PM 2 Q Okay. Continue.

03:45PM 3 A "Cummings: You still sleeping."

03:45PM 4 "Kiana. Jus wakin."

03:45PM 5 "Cummings. You have any plans for today??"

03:45PM 6 "Kiana: Dunno yet. Cousin just got back .. she kinda

03:45PM 7 get in irraz already."

03:45PM 8 Q Can I stop you?

03:45PM 9 What does irraz mean? Why does it say that?

03:45PM 10 A Irraz would be slang for irritated.

03:45PM 11 Q Thank you.

03:45PM 12 A "Cummings. Can you get away.. let me take you shops of

03:45PM 13 Wailea couple hours or go by the beach."

03:46PM 14 "Kiana. Dunno yet. She all up in my bizness -- she

03:46PM 15 all up in bizness rn."

03:46PM 16 Page 7 the top, "Cummings. Wanna go hang out

03:46PM 17 .. couple hours. Okay babes lmk."

03:46PM 18 Q What does lmk mean?

03:46PM 19 A My training and experience, that would be let me know.

03:46PM 20 Q Okay.

03:46PM 21 A "Kiana. Brah. So such stupid shit." Angry emoji. "I

03:46PM 22 want to go beach and cousin just fckin watching movies."

03:46PM 23 "Cummings. Well let me come get you n disappear for a

03:46PM 24 few hours. Let's go buy you a..." bikini emoji "...n go

03:46PM 25 beach."

03:46PM 1 "Kiana." Iirrrrrraaaaazzzzzzzz" scorpion emoji. "I
03:46PM 2 wish."
03:46PM 3 "Cummings. Babes want me come get you."
03:47PM 4 "Kiana. She's cool and all. Like my hanai sister but
03:47PM 5 she's hella boring."
03:47PM 6 "Cummings. Let's go have our own fun n you can go
03:47PM 7 back be boring later."
03:47PM 8 "Kiana. Can't just skip on obv kine. She's all up in
03:47PM 9 my biz cause she knows what I'm like..lol." Devil emojis.
03:47PM 10 "She's only 17, but she watch ova me more than my moms."
03:47PM 11 "Cummings. We should just go for a little while."
03:47PM 12 "Kiana. Can later prolly."
03:47PM 13 "Cummings. Yeah lmk. Give me at least 30/45 min
03:47PM 14 early so I can get to Kihei. I stay up country."
03:48PM 15 "Kiana. Kk."
03:48PM 16 "Cummings. We can go do what Evers you like n go take
03:48PM 17 you shopping. What you think you want to go do??"
03:48PM 18 The top, "Kiana" page 8. "Why you really want to buy
03:48PM 19 me..." swimming suit emoji and dress emoji. "Just be real.
03:48PM 20 Hate games dat HS boys play."
03:48PM 21 Q What does HS stand for? What were you trying to get at
03:48PM 22 there?
03:48PM 23 A HS would stand for high school.
03:48PM 24 "Cummings. We not playing games .. babes. I'll spoil
03:48PM 25 you if you wanna hang with me. You just be real too. What we

03:48PM 1 going get be between us .. no one need to know where or how you
03:48PM 2 being spoiled --
03:48PM 3 Q Let me stop you here for a second.
03:49PM 4 On that last entry from Cummings, the last message, in
03:49PM 5 your training and experience, why does he say that?
03:49PM 6 A My training and experience, why he's saying "not playing
03:49PM 7 games," meaning that his intentions are real and that he wanted
03:49PM 8 to spoil me and hang with me; that it would just be between us.
03:49PM 9 It would be secretive in nature and nobody else would need to
03:49PM 10 know how she would be getting spoiled and who she would be
03:49PM 11 getting spoiled by.
03:49PM 12 Q In your training and experience, in a child exploitation
03:49PM 13 case, why would he want to keep it secret?
03:49PM 14 A Because he realizes what he is doing is immoral and
03:49PM 15 illegal.
03:49PM 16 Q Why?
03:49PM 17 A And wrong. Because he is an adult and she is 13. Kiana
03:49PM 18 is a 13-year-old and she's -- correct. In the context as well
03:49PM 19 of being spoiled, buying things, providing marijuana would be
03:50PM 20 another coaxing, inducing and grooming of a minor.
03:50PM 21 Q Thank you.
03:50PM 22 A Kiana --
03:50PM 23 THE COURT: Before you continue, Officer, the last
03:50PM 24 entry that you read was not captured by the record. Counsel
03:50PM 25 interrupted you before you finished reading that entry, so you

03:50PM 1 might want to re-read it just so the record is complete.

03:50PM 2 THE WITNESS: Yes, sir.

03:50PM 3 "What we get going be between us. No one need to know

03:50PM 4 where or how you being spoiled m taken cared of."

03:50PM 5 "Kiana. I am being real... dats why I want to know,

03:50PM 6 not anyone else, lol. Jus saying cus I can't jus break out

03:50PM 7 wheneva.. my cousins parents come back tomorrow."

03:50PM 8 "Cummings. Well when ever you can we go do things.

03:50PM 9 I'm down for what Evers you like n when you like go. Look like

03:51PM 10 spring break going go on all month for you. Where you go high

03:51PM 11 school?..?"

03:51PM 12 "Kiana. Hahah right?" Zombie emojis. Just started

03:51PM 13 at Baldwin."

03:51PM 14 Q Why do you say he just started at Baldwin?

03:51PM 15 A Like I just began going to school, started freshman year

03:51PM 16 at Baldwin is a high school.

03:51PM 17 "Cummings. Fuck Baldwin lol. Send me a picture of

03:51PM 18 you laying around bored. Wyd."

03:51PM 19 "Kiana. Fuck Baldwin??..? Why dat?"

03:51PM 20 "Cummings. Lol. Maui high is our island school.

03:51PM 21 Babes send me a picture of you laying around being bored."

03:51PM 22 "Kiana. Why that. You havnt even sent me one pic

03:52PM 23 yet."

03:52PM 24 "Cummings," the top page 9, "Send me then I'll send

03:52PM 25 you."

03:52PM 1 "Kiana. I do love the..." money emoji "...pic tho.

03:52PM 2 You send a pic wit peace sign and I'll send u one."

03:52PM 3 Q Let me stop you there.

03:52PM 4 Why do you specifically ask for a peace sign picture?

03:52PM 5 A It's something that he would actually send to know he

03:52PM 6 would be actually real.

03:52PM 7 Q Thank you.

03:52PM 8 A "Cummings: It's not sending the pictures.

03:52PM 9 "Kiana. ?"

03:52PM 10 "Cummings. Trying to send you picture. It won't go

03:52PM 11 thru."

03:52PM 12 "Kiana. Omg." Eye roll emoji."

03:52PM 13 "Cummings." Image of -- purported to be Cummings with

03:53PM 14 two fingers up.

03:53PM 15 Q Let me ask you a question about that.

03:53PM 16 What did you interpret those two fingers to be in the

03:53PM 17 context of this conversation?

03:53PM 18 A Peace sign.

03:53PM 19 Q Thanks.

03:53PM 20 A "Kiana." Smiley face. "K.. hold on."

03:53PM 21 "Cummings. Send me a picture of you laying in your

03:53PM 22 booty shorts bored."

03:53PM 23 "Kiana." An image of Maui Police Department Officer

03:53PM 24 Ariga with two fingers raised in a peace sign."

03:53PM 25 Page 10. "Cummings. Still bored."

03:53PM 1 "Kiana. Omg I not wearing booty shorts. Yeah just
03:53PM 2 chilling with cousin and her gf."

03:53PM 3 "Cummings. Show me what you got on. Your cousin is a
03:53PM 4 guy or girl??"

03:53PM 5 "Kiana. Omg. Brah why you being pushy wit da pics?"

03:54PM 6 "Kiana. Girl."

03:54PM 7 "Cummings. Well you no let me see -- let me come see
03:54PM 8 you. Sorry."

03:54PM 9 "Kiana. I cannot help rn." Eye rolling emoji.

03:54PM 10 Q What does rn stand for?

03:54PM 11 A Right now.

03:54PM 12 "Cummings. You can by sending me pic." Laughing
03:54PM 13 emoji.

03:54PM 14 "Kiana. Eye rolling emojis. "Lol. Wyd?"

03:54PM 15 "Cummings. Nothing watching TV n" wind emojis.

03:54PM 16 "Kiana. Cool. So how you makin all dat" money
03:54PM 17 emojis.

03:54PM 18 "Cummings. Work Monday through Friday single, no
03:54PM 19 bills."

03:54PM 20 "Kiana. Lol. You look flashy tho.. hustlin."

03:55PM 21 Champagne emoji, plane emoji, diamond emoji. "Lol. I like
03:55PM 22 that."

03:55PM 23 Page 11 the top. "Cummings. Just came back from
03:55PM 24 Vegas."

03:55PM 25 "Kiana. Brah I want to go so bad. Nevah been."

03:55PM 1 "Cummings. I'm ready for go back. I stay on the
03:55PM 2 Vegas strip. Planet Hollywood has its own mall in it."
03:55PM 3 "Kiana." Hand raising emojis and airplane emojis.
03:55PM 4 "Cummings. Lol you can't even cruise couple hours yet
03:55PM 5 you like go Vegas."
03:55PM 6 "Kiana. Lol. I can 18er on when cousin goes to her
03:55PM 7 BF's place. We going down beach now."
03:55PM 8 "Cummings. Okay."
03:56PM 9 "Kiana. How old you nyway?"
03:56PM 10 "Cummings. 31."
03:56PM 11 "Kiana. Cool."
03:56PM 12 "Cummings. You okay with it."
03:56PM 13 "Kiana. Yeah. I like older guys duh.." eye rolling
03:56PM 14 emoji, laughing emoji. "U okay wit me being 13?"
03:56PM 15 Q Let me ask a question here.
03:56PM 16 Why did you ask that?
03:56PM 17 A He had told me his age. I reaffirmed my age as well so he
03:56PM 18 understood my age as being 13, reiterated that point.
03:56PM 19 Q Thank you.
03:56PM 20 A "Cummings. Ok.. so long your okay with me."
03:56PM 21 "Kiana. Yeah yeah. So what you looking 4 do wit me
03:56PM 22 bein 13? I can't go bars."
03:56PM 23 Q Let me stop you there.
03:56PM 24 Why did you say that?
03:56PM 25 A Looking for understanding what his intentions were to do

03:56PM 1 with a 13-year-old.

03:57PM 2 Page 12 at the top. "Cummings. Walk around the shops

03:57PM 3 Wailea holding your hand ... taking you to the beach n sleeping

03:57PM 4 under the stars waking up to you .. renting hotel rooms during

03:57PM 5 the weekends spoiling you .. late nights watching movies .. and

03:57PM 6 what ever you like do." Message is repeated.

03:57PM 7 "What you want me to do with you?." The message is

03:57PM 8 repeated from earlier.

03:57PM 9 "Kiana. --

03:57PM 10 Q I'm sorry. Excuse me.

03:57PM 11 A Sure.

03:57PM 12 Q If I could stop you there.

03:57PM 13 In your training and experience, why is DuckFat34

03:57PM 14 saying that last entry there?

03:57PM 15 A Regarding the walking around Shops of Wailea holding your

03:58PM 16 hand?

03:58PM 17 Q Yes.

03:58PM 18 A At that point he is, with a combination of pictures of

03:58PM 19 money, offering marijuana, going to the Shops of Wailea, which

03:58PM 20 is a high-end shopping mall in Wailea; Gucci, Tiffany, Prada,

03:58PM 21 those brands, taking me to hotel rooms, from my training and

03:58PM 22 experience, that is inducing, coaxing or grooming Kiana towards

03:58PM 23 having sexual acts.

03:58PM 24 Q Thank you. Please continue.

03:58PM 25 A "Kiana. So you want to like be my BF? Keep it in the

03:58PM 1 friend zone?"

03:58PM 2 Q Let me ask you, what does BF stand for?

03:58PM 3 A Boyfriend.

03:58PM 4 "Cummings. What you want??" The message is repeated

03:58PM 5 twice.

03:58PM 6 Q Again, do you know why some of these messages are just

03:58PM 7 repeated on here?

03:58PM 8 A I don't. They were sent to me. This is how it was sent.

03:59PM 9 "So I don't expect to much or do to much n disrespect

03:59PM 10 you."

03:59PM 11 "Kiana. I like have fun and like guys who keep it

03:59PM 12 100. Sry."

03:59PM 13 "Cummings. For sure we going have fun" blushing

03:59PM 14 emoji.

03:59PM 15 "Kiana. Sry but can't be having a 31yo full time bf."

03:59PM 16 "Cummings. Hopefully we can. Start from tonight."

03:59PM 17 Page 13 top, "Kiana. Sry my phone glitching up."

03:59PM 18 "Cummings. On the down low can. You still down the

03:59PM 19 beach."

03:59PM 20 "Kiana. What you want to do for fun then? We walkin

03:59PM 21 back up.

03:59PM 22 "Cummings. Eat your pussy." The message is repeated.

04:00PM 23 "Send me a picture of you n the sunset.

04:00PM 24 Q Let me stop you here.

04:00PM 25 Why do you think Cummings says those entries at this

04:00PM 1 point in the conversation in your training and experience?

04:00PM 2 A He had been building up with sending pictures of money,

04:00PM 3 marijuana -- offering marijuana, take me shopping, then once

04:00PM 4 again inducing and grooming me to the point of now breaking

04:00PM 5 down my natural boundaries of Kiana and now wanting to have

04:00PM 6 sexual contact with her.

04:00PM 7 Q When you say "me," you mean --

04:00PM 8 A Kiana.

04:00PM 9 Q Kiana.

04:00PM 10 A Right.

04:00PM 11 Q Okay. Please continue.

04:00PM 12 A "Kiana. We walkin back to her house already. Kiana. U

04:00PM 13 good at that?" Tongue emoji, blushing emoji.

04:00PM 14 "Cummings. You didn't take a picture down by the

04:01PM 15 beach. Wyd."

04:01PM 16 "Kiana. K. Hold on."

04:01PM 17 "Cummings. You gonna find out" laughing emoji.

04:01PM 18 Message is repeated twice.

04:01PM 19 Q Let me just stop you.

04:01PM 20 When you said "U good at that" and there's the two

04:01PM 21 emojis, what did you mean by that?

04:01PM 22 A "U good at that" regarding his message "Eat your pussy."

04:01PM 23 Q Okay.

04:01PM 24 A "You gonna find out."

04:01PM 25 Kiana, next down, blushing emoji, upside down face

04:01PM 1 emoji, "I like that."

04:01PM 2 "Cummings. Let gonna let me shave you first."

04:01PM 3 "Kiana. Lol. Don't get much hair anyway. Haha."

04:01PM 4 Q Question, what kind of hair are you talking about there?

04:01PM 5 A Pubic hair.

04:01PM 6 Q Thanks.

04:01PM 7 A "Cummings. You going let me -- you going to let me."

04:01PM 8 "Kiana. Hapa Japanese."

04:02PM 9 "Cummings. Any guy eat you yet?"

04:02PM 10 "Kiana. My ex bf tried. He was horrors tho," eye

04:02PM 11 rolling emoji.

04:02PM 12 "Cummings. I'm gonna eat you till you cum a few times

04:02PM 13 on my face babes. Get your pussy so wet."

04:02PM 14 "Kiana. Lol make it rain?" Water splashing emojis.

04:02PM 15 "Kiana. Lol.

04:02PM 16 "Cummings. Have you slowly sat on me taking me in you

04:02PM 17 slowly. You must be so tight you going to squirt when I make

04:02PM 18 you cum. Can't see with the light in the back."

04:02PM 19 "Kiana" blank emoji -- blank message. "Lol. Just

04:02PM 20 with my exbf. He wasn't dat big." Eggplant emoji, eye rolling

04:02PM 21 emoji.

04:03PM 22 "Cummings. Your cousin going to leave soon?..? I'm

04:03PM 23 going to head down.

04:03PM 24 "Kiana. Can you make it rain..." money emojis "...all

04:03PM 25 over my body? Lol."

04:03PM 1 "Cummings. Jump in the shower I'm gonna head down
04:03PM 2 pick you up .. take a few pic in the shower for me." Hands
04:03PM 3 praying emoji, blushing emoji, kissing emoji.
04:03PM 4 Page 15 the top. "Cummings. Yes I'll bring you some
04:03PM 5 for -- I'll bring some for you tonight."
04:03PM 6 "Kiana" blushing emojis.
04:03PM 7 "Cummings. Or make a video. You be ready by 7:45.?"
04:03PM 8 "Kiana. My cousin still home.. I gotta make n excuse
04:03PM 9 to leave. We stay off Kilohana."
04:03PM 10 Q Question here. Is this the first time you give him a
04:04PM 11 location?
04:04PM 12 A Yes.
04:04PM 13 Q Why do you give him this location?
04:04PM 14 A That would be the area that was going to be predetermined
04:04PM 15 by law enforcement officers to meet up with DuckFat, Lyle
04:04PM 16 Cummings, in the situation.
04:04PM 17 "Cummings. You gotta run store get pads lol. By the
04:04PM 18 fire station."
04:04PM 19 "Kiana." Laughing emoji. "Yeah jus down from there.
04:04PM 20 U got condoms? I can meet u Kilohana Park."
04:04PM 21 "Cummings: Ok 7:45??"
04:04PM 22 "Kiana. Yah, can."
04:04PM 23 "Cummings. Okay see you soon."
04:04PM 24 "Kiana. Kk."
04:04PM 25 "Cummings. You gonna shower n take me a picture or

04:04PM 1 video."

04:04PM 2 "Kiana. I stay tryin to get away from my cousin."

04:05PM 3 Page 16 the top. "Kiana." Picture of UC Ariga with

04:05PM 4 pink glasses. "I gonna leave now... where you stay."

04:05PM 5 "Cummings. Coming. Almost passing Puunene."

04:05PM 6 Q What's that word there?

04:05PM 7 A Puunene is an area on Maui, central Maui.

04:05PM 8 "Kiana. Ok."

04:05PM 9 "Cummings. I like that last picture .. wish you

04:05PM 10 wouldn't cover your beautiful face are you wearing that

04:05PM 11 tonight?"

04:05PM 12 "Kiana. Lol. ty... kinda self conscious bout my

04:05PM 13 skin.."

04:05PM 14 Q What does ty mean?

04:05PM 15 A Thank you.

04:05PM 16 "No. Wearing pink hoodie."

04:05PM 17 "Cummings. Ok no panties?"

04:06PM 18 "Kiana. Hahahaha. I get thong" smiley.

04:06PM 19 "Kiana. There's a weirdo at the dog park... I'mm

04:06PM 20 walk down Kilohana to the parking lot across Sidewalks."

04:06PM 21 Q Let me stop you there.

04:06PM 22 What's Sidewalks?

04:06PM 23 A Sidewalks is an area near the entrance of Keawakapu Beach

04:06PM 24 Park, or Keawakapu Beach.

04:06PM 25 Q Why did you change or be more specific about the location

04:06PM 1 at this time?

04:06PM 2 A For logistical or strategical purposes, the officers

04:06PM 3 decided to change the location down the road shortly to the

04:06PM 4 area of the Kilohana parking lot near the area of South Kihei

04:06PM 5 Road.

04:06PM 6 "Cummings. Ok.

04:06PM 7 "Kiana. What kinda car u got?"

04:06PM 8 "Cummings: Toy truck."

04:06PM 9 "Kiana. Ok. U wanna walk over to the beach?"

04:06PM 10 "Cummings. Let's go drive to a spot by the beach."

04:07PM 11 "Kiana. Ok, you don't want to cruise Keawakapu?"

04:07PM 12 "Cummings. The gate not going close."

04:07PM 13 "Kiana. Oh. I dunno. Ok den. Yeah, think it gonna

04:07PM 14 close. Can park on the street tho."

04:07PM 15 "Cummings. Just getting into Kihei."

04:07PM 16 "Kiana. Ok. I stay by entrance to Sidewalks. We can

04:07PM 17 walk down beach from there."

04:07PM 18 "Cummings. I no like leave my truck there."

04:07PM 19 "Kiana. Can park on the street. We can just cruise

04:07PM 20 beach for a little bit. What color your truck? Did you just

04:07PM 21 pass me?"

04:07PM 22 "Cummings. Where you. Come jump in. Hurry up."

04:07PM 23 "Kiana. Come here."

04:07PM 24 Page 18. "Cummings. Cross the street now."

04:08PM 25 Then "Kiana," test messages repeated multiple times.

04:08PM 1 Q What's the significance of those last messages saying
04:08PM 2 "test," "test"?

04:08PM 3 A At that point I was informed by surveillance officers and
04:08PM 4 other officers during the investigation that Mr. Cummings had
04:08PM 5 arrived at the spot, the area of Kilohana, South Kihei Road,
04:08PM 6 and he was arrested at that point. The test text messages were
04:08PM 7 sent by me in order to confirm his mobile device that he was
04:08PM 8 using to send the text messages.

04:08PM 9 Q Is that a common practice in these type of operations?

04:08PM 10 A Yes, ma'am.

04:08PM 11 Q I'm sorry. What's the purpose of it again?

04:08PM 12 A In order to confirm and locate that phone that he was
04:08PM 13 using to communicate with me during this -- our chats.

04:08PM 14 Q And is this the end of your exchange of messages with
04:09PM 15 DuckFat34?

04:09PM 16 A Yes, ma'am.

04:09PM 17 Q Are you aware of -- let me ask it this way: In the --
04:09PM 18 THE COURT: Before you ask the next question, would
04:09PM 19 you please retrieve Exhibit 4, copies that have been
04:09PM 20 distributed to the jurors? Once that has been completed, you
04:09PM 21 may continue your examination.

04:09PM 22 MS. OLSON: Let the record reflect the handout of
04:10PM 23 Exhibit 4 has been collected from the jury.

04:10PM 24 THE COURT: Thank you.

04:10PM 25 BY MS. OLSON:

ORIGINALUnited States District Court
District of Hawaii

OCT 12 2023

at 4 o'clock and 38 min. N
Lucy H. Carrillo, ClerkUNITED STATES OF AMERICA
v.
LYLE RIKIO CUMMINGS

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:22CR00023-001
USM Number: 12444-122
Joseph R. Mottl, III
Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s): ____.

pleaded nolo contendere to count(s) ____ which was accepted by the court.

was found guilty on counts 1 and 2 of the Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 2422(b)	Coercion and Enticement	03/15/2020	1
21 USC §§ 841(a)(1) and 841(b)(1)(C)	Possession with Intent to Distribute Cocaine and Cocaine Base	03/15/2020	2

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

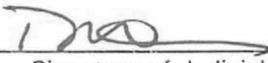
The defendant has been found not guilty on count(s) ____ and is discharged as to such count(s).

Count(s) ____ (is)(are) dismissed on the motion of the United States.

It is further ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

October 10, 2023

Date of Imposition of Judgment



Signature of Judicial Officer

DERRICK K. WATSON, Chief United States District Judge
Name & Title of Judicial Officer10/12/2023
Date

Case 1:22-cr-00023-DKW Document 162 Filed 10/12/23 Page 2 of 7 PageID.933

AO 245B (Rev. 6/05) Judgment in a Criminal Case
Sheet 2 - ImprisonmentDEFENDANT: LYLE RIKIO CUMMINGS
CASE NUMBER: 1:22CR00023-001

Judgment - Page 2 of 7

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: ONE HUNDRED TWENTY-SIX (126) MONTHS.

This term consists of ONE HUNDRED TWENTY-SIX (126) MONTHS as to Count 1 and Count 2, terms to run concurrently.

- The court makes the following recommendations to the Bureau of Prisons:
 1. Defendant to be placed at Federal Detention Center, Honolulu (1st choice to be near family); Terminal Island FCI (2nd choice) or Lompoc FCI (3rd choice);
 2. Defendant to receive a Mental Health Assessment and Treatment, if needed; and
 3. Defendant to receive Vocational and Educational programming.
- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district.
 - at ____ on ____.
 - as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 - before 2 p.m. on ____.
 - as notified by the United States Marshal.
 - as notified by the Probation or Pretrial Services Officer.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

000215

Case 1:22-cr-00023-DKW Document 162 Filed 10/12/23 Page 3 of 7 PageID.934

AO 245B (Rev. 2/18) Judgment in a Criminal Case
Sheet 3 - Supervised ReleaseDEFENDANT: LYLE RIKIO CUMMINGS
CASE NUMBER: 1:22CR00023-001

Judgment - Page 3 of 7

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **SEVEN (7) YEARS.**

This term consists of **SEVEN (7) YEARS** as to Count 1 and Count 2, terms to run concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state, or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of commencement of supervision and at least two periodic drug tests thereafter but no more than 8 valid drug tests per month during the term of supervision.
 - The above drug testing condition is suspended, based on the court's determination that you poses a low risk of future substance abuse. *(Check if applicable.)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(Check if applicable.)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(Check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location you reside, work, are a , or were convicted of a qualifying offense. *(Check if applicable)*
7. You must participate in an approved program for domestic violence. *(Check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

Case 1:22-cr-00023-DKW Document 162 Filed 10/12/23 Page 4 of 7 PageID.935

AO 245B (Rev. 2/18) Judgment in a Criminal Case
Sheet 3A - Supervised ReleaseDEFENDANT: LYLE RIKIO CUMMINGS
CASE NUMBER: 1:22CR00023-001

Judgment - Page 4 of 7

STANDARD CONDITIONS OF SUPERVISION

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of the time you are released, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when to report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by the probation officer. Your legitimate invocation of the Fifth Amendment privilege against self-incrimination in response to a probation officer's question shall not be considered a violation of this condition.
5. You must live at a place approved by the probation officer. If you plan to change where you live or who lives with you, you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time reasonable under the circumstances at your home or elsewhere, and you must permit, to the extent you are able or authorized to do so, the probation officer to take any items prohibited by the conditions of your supervision that the officer observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment, you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or if there are substantial changes to your job responsibilities, you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. Unless you have received advance permission from the probation officer or the association is required by supervision conditions, you must not voluntarily and intentionally associate with any person you know is engaged in committing a federal, state, or local crime, not including traffic offenses, whether the crime is being committed in or outside of your presence. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, as defined in 18 U.S.C. § 921(a)(4), or dangerous weapon (that is, anything that was designed or was modified for the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to an organization or a person relating to your criminal record or personal history or characteristics, the probation officer may require, with the court's approval, that you notify that organization or person (or that person's parent, guardian, caretaker, or other individual responsible for the person's welfare) about the risk, and you must comply with that instruction. The probation officer may contact the organization or person that you were directed to notify and confirm that you notified that organization or person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation Officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see Overview of Probation and Supervised Release Conditions, available at : www.uscourts.gov.

Defendants Signature _____

Date _____

Case 1:22-cr-00023-DKW Document 162 Filed 10/12/23 Page 5 of 7 PageID.936

AO 245B (Rev. 2/18) Judgment in a Criminal Case
Sheet 3D - Supervised ReleaseDEFENDANT: LYLE RIKIO CUMMINGS
CASE NUMBER: 1:22CR00023-001

Judgment - Page 5 of 7

SPECIAL CONDITIONS OF SUPERVISED RELEASE

1. You must participate in a substance abuse assessment as coordinated by the probation officer. Based on the results of that assessment, the probation officer may then request that the Court order specific substance abuse treatment. The probation officer is authorized to disclose the Presentence Report to the provider conducting the substance abuse assessment and/or treatment.
2. You may change your residence only with the advance approval of the probation officer. You must appear in person at the state registration agency within three business days after the change of residence to report such change.
3. You must participate in a sex offense-specific assessment and any recommended treatment program, and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program (provider, location, modality, duration, and intensity). Your legitimate invocation of the Fifth Amendment privilege against self-incrimination in response to a treatment provider's question shall not be considered a violation of this condition.
4. You must submit to periodic polygraph testing at the direction of the probation officer as a means to ensure that you are in compliance with the requirements of your supervision or treatment program. A maximum of six polygraph tests per year is allowed, unless otherwise ordered by the Court. Your supervision may not be revoked based solely upon the results of a polygraph test. Your legitimate invocation of the Fifth Amendment privilege against self-incrimination in response to a polygrapher's question shall not be considered a violation of this condition.
5. You must participate in visual response testing as part of the required participation in a sex offense-specific assessment and/or treatment.
6. You must not have direct contact with any child you know or reasonably should know to be under the age of 18, including your own children, without the permission of the probation officer. If you do have any direct contact with any child you know or reasonably should know to be under the age of 18, including your own children, without the permission of the probation officer, you must report this contact to the probation officer within 24 hours. Direct contact includes written communication, in-person communication, or physical contact. Direct contact does not include incidental contact during ordinary daily activities in public places.
7. You must not possess and/or use computers [as defined in 18 USC § 1030(e)(1)] or other electronic communications or data storage devices or media that can access materials with depictions of sexually explicit conduct involving children [as defined by 18 USC § 2256(2)] and/or actual sexually explicit conduct involving adults [as defined by 18 USC § 2257(h)(1)], without the prior approval of the probation officer.
8. You must not access the Internet except for reasons approved in advance by the probation officer.
9. You must provide the probation officer access to any requested financial information and authorize the release of any financial information. The probation office may share financial information with the US Attorney's Office.
10. You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 USC § 1030(e)(1)), other electronic communications or storage devices or media, or office to a search conducted by a probation officer. Failure to submit to a search may be grounds for revocation of release. The probation officer may conduct a search under this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner. You must also submit to periodic unannounced examinations of your computer and computer accessories, as well as provide access to Internet service provider account records, as directed by the probation officer. You must warn other occupants that the premises may be subject to searches pursuant to this condition.

Case 1:22-cr-00023-DKW Document 162 Filed 10/12/23 Page 6 of 7 PageID.937

AO 245 B (Rev. 02/18) Judgment in a Criminal Case
Sheet 5 - Criminal Monetary PenaltiesDEFENDANT: LYLE RIKIO CUMMINGS
CASE NUMBER: 1:22CR00023-001

Judgment - Page 6 of 7

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
Totals: \$ 200.00 (\$100.00 per count)	\$	\$	\$

The determination of restitution is deferred until . An *Amended Judgment in a Criminal Case* (AO245C) will be entered after such a determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. §3664(i), all non-federal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	---------------------	----------------------------	-------------------------------

TOTALS	\$ _	\$ _
--------	------	------

Restitution amount ordered pursuant to plea agreement \$ _

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. §3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution

the interest requirement for the fine restitution is modified as follows:

*Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

**Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

Case 1:22-cr-00023-DKW Document 162 Filed 10/12/23 Page 7 of 7 PageID.938

AO 245B (Rev. 02/18) Judgment in a Criminal Case
Sheet 6 - Schedule of PaymentsDEFENDANT: LYLE RIKIO CUMMINGS
CASE NUMBER: 1:22CR00023-001

Judgment - Page 7 of 7

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A Lump sum payment of \$ __ due immediately, balance due
 - not later than __, or
 - in accordance C, D, E, or F below, or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal __ (e.g., weekly, monthly, quarterly) installments of \$ __ over a period of __ (e.g., months or years), to commence __ (e.g., 30 or 60 days) after the date of this judgment ; or
- D Payment in equal __ (e.g., weekly, monthly, quarterly) installments of \$ __ over a period of __ (e.g., months or years), to commence __ (e.g., 30 or 60 days) after the release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within __ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number, Total Amount, Joint and Several Amount, and corresponding pay, if appropriate).
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:
 - i. \$645.00 in U.S. Currency; and
 - ii. A black iphone 7 Model A16690.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

000220

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF Hawaii

**Form 1. Notice of Appeal from a Judgment or Order of a
 United States District Court**

U.S. District Court case number: Cr. No. 22-00023 DKW

Notice is hereby given that the appellant(s) listed below hereby appeal(s) to the United States Court of Appeals for the Ninth Circuit.

Date case was first filed in U.S. District Court: 06/18/2021

Date of judgment or order you are appealing: 10/12/2023

Docket entry number of judgment or order you are appealing: 162

Fee paid for appeal? (*Appeal fees are paid at the U.S. District Court*)

Yes No IFP was granted by U.S. District Court

List all Appellants (*List each party filing the appeal. Do not use "et al." or other abbreviations.*)

LYLE RIKIO CUMMINGS #12444-122

Is this a cross-appeal? Yes No

If yes, what is the first appeal case number?

Was there a previous appeal in this case? Yes No

If yes, what is the prior appeal case number?

Your mailing address (if pro se):

Lyle Rikio Cummings #12444-122

Federal Detention Center, Honolulu, 351 Elliott Street

City: Honolulu State: HI Zip Code: 96819

Prisoner Inmate or A Number (if applicable): #12444-122

Signature  Date Oct 20, 2023

Complete and file with the attached representation statement in the U.S. District Court

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 6. Representation Statement

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form06instructions.pdf>

Appellant(s) (List *each* party filing the appeal, do not use "et al." or other abbreviations.)

Name(s) of party/parties:

LYLE RIKIO CUMMINGS

Name(s) of counsel (if any):

REQUESTING APPOINTED ATTORNEY ON APPEAL

Trial counsel in United States District Court for District of Hawaii: Joseph R. Mottl, Esq. #3118.

Address:

Telephone number(s):

Email(s):

Is counsel registered for Electronic Filing in the 9th Circuit? Yes No

Appellee(s) (List *only* the names of parties and counsel who will oppose you on appeal. List separately represented parties separately.)

Name(s) of party/parties:

United States of America

Name(s) of counsel (if any):

Clare E. Connors, United States Attorney, #7936

Christine Olson, Assistant U.S. Attorney

Address: Room 6100, PJKK Fed. Bldg., 300 Ala Moana Blvd. Honolulu HI 96850

Telephone number(s): (808) 541-2850

Email(s): Christine.C.Olson2@usdoj.gov

To list additional parties and/or counsel, use next page.

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

APPEAL,CLOSED

**U.S. District Court
District of Hawaii (Hawaii)
CRIMINAL DOCKET FOR CASE #: 1:22-cr-00023-DKW-1**

Case title: USA v. Cummings

Date Filed: 03/24/2022

Magistrate judge case number: 1:21-mj-00751-RT

Date Terminated: 10/12/2023

Assigned to: CHIEF JUDGE DERRICK K.
WATSON

Appeals court case number: 23-3016 Ninth
Circuit Court of Appeals

Defendant (1)

Lyle Rikio Cummings
TERMINATED: 10/12/2023

represented by **George C. Boisseau**
Law Offices of George C. Boisseau
1330 Lunalilo Home Road
Second Floor
Honolulu, HI 96825
707-578-5636
Fax: 707-578-1141
Email: boisseaugc@msn.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: CJA Appointment

Clarence McCurdy Virtue
Cary Virtue, Attorney at Law
1931 E. Vineyard St.
Suite 201
Wailuku, HI 96793
(808) 244-7640
Email: carymvirtue@msn.com
TERMINATED: 12/09/2021
Designation: CJA Appointment

Joseph R. Mottl , III
2009 Makiki Street #C
Honolulu, HI 96822
808-371-7595
Email: jrmottlesq@gmail.com
TERMINATED: 01/04/2024
Designation: Retained

Pending Counts

18:2422.F COERCION OR ENTICEMENT
OF FEMALE, 18:2422(b)

Disposition

SENTENCE: Imprisonment: 126 Months as
to Count 1 and Count 2, terms to run

(1)

21:841A=ND.F NARCOTICS - SELL,
DISTRIBUTE, OR DISPENSE, Possession
with intent to distribute cocaine and cocaine
base, a Schedule II controlled substance,
21:841(a)(1) and 841(b)(1)(C)

(2)

concurrently. Supervised Release: 7 Years as
to Count 1 and Count 2, terms to run
concurrently. Fine: None. Restitution: None.
Special Assessment: \$200.00 (\$100.00 per
count). Mittimus forthwith.

SENTENCE: Imprisonment: 126 Months as
to Count 1 and Count 2, terms to run
concurrently. Supervised Release: 7 Years as
to Count 1 and Count 2, terms to run
concurrently. Fine: None. Restitution: None.
Special Assessment: \$200.00 (\$100.00 per
count). Mittimus forthwith.

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Disposition

Highest Offense Level (Terminated)

None

Disposition

Complaints

18:2422.F - Count 1: COERCION OR
ENTICEMENT OF FEMALE, 18:2422(b);
Count 2: Possession with intent to distribute
cocaine, a Schedule II controlled substance,
21:841(a)(1) and 841(b)(1)(C)

Plaintiff

USA

represented by **Christine Olson**

Office of the United States Attorney
Prince Kuhio Federal Building
300 Ala Moana Blvd Ste 6100
Honolulu, HI 96850
(808) 541-2850
Fax: (808) 541-2958
Email: christine.olson2@usdoj.gov
TERMINATED: 07/01/2024
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Government

Rebecca Ann Perlmutter
Office of the U.S. Attorney
PJKK Federal Building, Room 6-100
300 Ala Moana Boulevard
Honolulu, HI 96850

(808) 541-2850
 Fax: (808) 541-2958
 Email: rebecca.perlmutter@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Government

Date Filed	#	Docket Text
06/18/2021	<u>1</u>	SEALED CRIMINAL COMPLAINT; AFFIDAVIT in Support of Criminal Complaint as to Lyle Rikio Cummings (1) - Signed by MAGISTRATE JUDGE ROM TRADER on 6/18/2021. (emt,) Modified on 6/23/2021 (emt,). [1:21-mj-00751-RT] (Entered: 06/18/2021)
06/18/2021	<u>3</u>	EX PARTE MOTION TO SEAL DOCUMENT; DECLARATION OF MORGAN EARLY; ORDER GRANTING MOTION TO SEAL DOCUMENTS as to Lyle Rikio Cummings - Signed by MAGISTRATE JUDGE ROM TRADER on 6/18/2021. (SEALED)(emt,) Modified on 6/23/2021 (emt,). [1:21-mj-00751-RT] (Entered: 06/18/2021)
06/21/2021	<u>4</u>	EO : as to defendant (1)Lyle Rikio Cummings - Initial Appearance is set for 6/23/2022 2021 at 10:30 AM in Courtroom 5 before MAGISTRATE JUDGE ROM TRADER. Parties have been notified. (Cary Virtue, Esq. is provisionally appointed pending submission of Defendant's Financial Affidavit form at a later date). (MAGISTRATE JUDGE ROM TRADER)(laa) Modified on 6/22/2021 (laa,). [1:21-mj-00751-RT] (Entered: 06/21/2021)
06/21/2021		Arrest of Lyle Rikio Cummings on 6/21/2021. (emt,) [1:21-mj-00751-RT] (Entered: 06/23/2021)
06/23/2021	<u>5</u>	MOTION to Detain Defendant - by USA as to Lyle Rikio Cummings. (emt,) [1:21-mj-00751-RT] (Entered: 06/23/2021)
06/23/2021	<u>6</u>	Arrest Warrant Returned Executed on 6/21/2021 in case as to Lyle Rikio Cummings. (emt,) [1:21-mj-00751-RT] (Entered: 06/23/2021)
06/23/2021	<u>7</u>	<p>EP : Initial Appearance as to Lyle Rikio Cummings held on 6/23/2021. Defendant present and in custody.</p> <p><u>Appointment of Counsel:</u> Court provisionally appoints Clarence Virtue subject to submission of Financial Affidavit at a later date.</p> <p><u>Motion to Unseal:</u> Government orally moves to unseal Complaint. Motion Granted. Case unsealed.</p> <p><u>Initial Appearance:</u> Mr. Virtue represents having reviewed the charges with Defendant. Defendant acknowledges general understanding of the charges.</p> <p><u>Detention Hearing scheduled before Magistrate Judge Trader:</u> Detention Hearing is set for June 28, 2021 at 10:30 a.m. before Magistrate Judge Rom Trader in Courtroom 5.</p> <p><u>Preliminary Hearing scheduled before Magistrate Judge Porter:</u></p>

Telephonic Preliminary Hearing is set for July 7, 2021 at 9:30 a.m. before Magistrate Judge Wes Reber Porter.

Pursuant to the United States District Court for the District of Hawaii's current *Order Authorizing the Use of Telephonic and Video Hearings Pursuant to the CARES Act*, the **Preliminary Hearing will be held telephonically via AT&T Connect Audio Conference**. Call-in information for these hearings is below. Parties must connect to the conference at least five (5) minutes prior to the scheduled start time of the hearings.

Dial in number is 1-888-278-0296.
Access Code is 8224751.

Due Process Protection Act Advisory:

The Court orders the United States to comply with its disclosure obligations under *Brady v. Maryland* and its progeny. Failing to timely do so may result in consequences such as sanctions, adverse jury instructions, exclusion of evidence, and dismissal of charges. This order incorporates the provisions of the Court's *February 1, 2021 General Order Regarding Rule 5(f)*.

Defendant remanded to the custody of the U.S. Marshals Service.

Initial Appearance as to Lyle Rikio Cummings held on 6/23/2021.

***Procedural Interval start as to Lyle Rikio Cummings.

Detention Hearing is set for 6/28/2021 10:30 AM in Courtroom 5 before MAGISTRATE JUDGE ROM TRADER.

Preliminary Hearing is set for 7/7/2021 09:30 AM in Telephonic Hearing before MAGISTRATE JUDGE WES REBER PORTER.

(FTR-CT 5 / 10:30-10:40 AM) (MAGISTRATE JUDGE ROM TRADER)
(emt,) [1:21-mj-00751-RT] (Entered: 06/23/2021)

06/23/2021	8	CJA 20 as to Lyle Rikio Cummings: Clarence McCurdy Virtue, Esq. appointed for Lyle Rikio Cummings. Signed by MAGISTRATE JUDGE ROM TRADER on 6/23/2021. Nunc Pro Tunc: 6/21/2021. (emt,) [1:21-mj-00751-RT] (Entered: 06/23/2021)
06/28/2021	9	<p>EP : Detention Hearing as to Lyle Rikio Cummings held on 6/28/2021. Defendant present, in custody.</p> <p>Appointment of Counsel: Defendant sworn to Financial Affidavit. Court's appointment of Clarence Virtue no longer a provisional appointment.</p> <p>Detention Hearing: Argument had. Government concurs with recommendation of Pretrial Services.</p> <p>The Court taking judicial notice of the records and files, the Complaint and Affidavit in Support ECF 1 , Government's Motion to Detain Defendant ECF 5 , the Pretrial Services Report, relevant legal authority, and having considered arguments of counsel, finds the conditions recommended by Pretrial Services sufficient to reasonably assure the appearance of the defendant as required and the safety of the community.</p> <p>Government WITHDRAWS its Motion to Detain Defendant ECF 5 .</p> <p>The Court adopts the recommendation of Pretrial Services and orders Defendant (1) Lyle Rikio Cummings released on an <u>unsecured bond in the amount of: \$50,000.00</u> with the following conditions (refer to attached minutes). <u>Release is delayed pending a bed space at Makana O Ke Akua (MOKA) Houseand the availability of GPS equipment.</u></p> <p>The Court reviewed the above release conditions with Defendant. Defendant advised of</p>

		<p>possible adverse action for failure to comply with any condition, to include issuance of a warrant for Defendant's arrest, revocation of release status and detention pending trial. Defendant acknowledged understanding the foregoing release conditions, his obligation to comply, and the consequences of violating any conditions of release. These minutes will serve as the conditions of bond.</p> <p>Defendant to remain in custody at the Federal Detention Center until notification by Pretrial Services Office that all conditions of release have been satisfied.</p> <p>Detention Hearing as to Lyle Rikio Cummings held on 6/28/2021; withdrawing <u>5</u> Motion to Detain as to Lyle Rikio Cummings (1); Motions terminated as to Lyle Rikio Cummings: <u>5</u> MOTION to Detain filed by USA.; Bond set as to Lyle Rikio Cummings (1) \$50,000.00 UNSECURED.</p> <p>(FTR-CT 5 / 10:30-10:55 AM) (MAGISTRATE JUDGE ROM TRADER) (emt,) [1:21-mj-00751-RT] (Entered: 06/28/2021)</p>
06/28/2021	<u>10</u>	CJA 23 Financial Affidavit - by Lyle Rikio Cummings. (emt,) [1:21-mj-00751-RT] (Entered: 06/28/2021)
06/29/2021	<u>11</u>	FIRST STIPULATION AND ORDER TO CONTINUE PRELIMINARY HEARING AND FOR EXCLUSION OF TIME UNDER THE SPEEDY TRIAL ACT as to Lyle Rikio Cummings - Signed by MAGISTRATE JUDGE ROM TRADER on 6/29/2021. Time excluded from 7/7/2021 until 10/7/2021. Preliminary Hearing is CONTINUED to 10/7/2021 09:30 AM in Courtroom 7 before MAGISTRATE JUDGE WES REBER PORTER. (emt,) [1:21-mj-00751-RT] (Entered: 06/29/2021)
07/06/2021	<u>12</u>	Abstract of Release as to Lyle Rikio Cummings [date of release: 7/12/2021] (emt,) [1:21-mj-00751-RT] (Entered: 07/08/2021)
09/03/2021	<u>13</u>	NOTICE OF ATTORNEY APPEARANCE Rebecca Ann Perlmutter appearing for USA. ; <i>Certificate of Service</i> (Perlmutter, Rebecca) [1:21-mj-00751-RT] (Entered: 09/03/2021)
09/29/2021	<u>14</u>	SECOND STIPULATION AND ORDER TO CONTINUE PRELIMINARY HEARING AND FOR EXCLUSION OF TIME UNDER THE SPEEDY TRIAL ACT as to Lyle Rikio Cummings - Signed by MAGISTRATE JUDGE ROM TRADER on 9/29/2021. Time excluded from 10/7/2021 until 12/9/2021. Preliminary Hearing is set for 12/9/2021 09:30 AM in Courtroom 6 before MAGISTRATE JUDGE KENNETH J. MANSFIELD. (eta) [1:21-mj-00751-RT] (Entered: 09/29/2021)
09/29/2021	<u>15</u>	NOTICE OF ATTORNEY APPEARANCE Christine Olson appearing for USA. (Olson, Christine) [1:21-mj-00751-RT] (Entered: 09/29/2021)
12/06/2021	<u>16</u>	<p>EO: as to Lyle Rikio Cummings - By agreement of the parties, the Telephonic Preliminary Hearing previously set for 12/09/2021 IS CONTINUED TO 02/08/2022 at 9:30 a.m. before MAGISTRATE JUDGE WES REBER PORTER. Parties have been notified. Government to prepare the Stipulation and Order to be submitted to mansfield_orders@hid.uscourts no later than Friday, December 10, 2021.</p> <p>Pursuant to the United States District Court for the District of Hawaii's latest Temporary General Order Regarding District of Hawaii Response to COVID-19 Emergency and Order Authorizing the Use of Telephonic and Video Hearings pursuant to the CARES Act, this hearing will be held telephonically. Parties are to participate via telephone through our AT&T Service. Call-in information for this conference is below. Parties must connect to the conference at least ten (10) minutes prior to the scheduled start time of the hearing.</p> <p>Dial in number is 1-888-278-0296 Access Code is 8224751</p>

		(MAGISTRATE JUDGE KENNETH J. MANSFIELD)(bbb) [1:21-mj-00751-RT] (Entered: 12/06/2021)
12/08/2021	<u>17</u>	THIRD STIPULATION AND ORDER TO CONTINUE PRELIMINARY HEARING AND FOR EXCLUSION OF TIME UNDER THE SPEEDY TRIAL ACT as to Lyle Rikio Cummings - Signed by MAGISTRATE JUDGE KENNETH J. MANSFIELD on 12/8/2021. Time excluded from 12/9/2021 until 2/8/2022. The Preliminary Hearing is continued to to February 8, 2022 at 9:30 a.m., before the Honorable Wes Reber Porter. (eta) [1:21-mj-00751-RT] (Entered: 12/08/2021)
12/09/2021	<u>18</u>	NOTICE OF APPEARANCE OF RETAINED COUNSEL FOR DEFENDANT IN THE STEAD OF CJA PANEL COUNSEL; ORDER as to Lyle Rikio Cummings - Signed by MAGISTRATE JUDGE KENNETH J. MANSFIELD on 12/9/2021. Added attorney Joseph R. Mottl, III for Lyle Rikio Cummings. Attorney Clarence McCurdy Virtue terminated in case as to Lyle Rikio Cummings. (eta) [1:21-mj-00751-RT] (Entered: 12/09/2021)
12/17/2021	<u>20</u>	MOTION for Order Modifying Conditions of Release <i>on Unsecured Bond or, in the Alternative, Order Granting Compassionate Release</i> ; Declaration of Counsel; Declaration of Lyle Rikio Cummings; Declaration of Vianna Kahanu; Memorandum in Support of Motion; Exhibits "A" and "B" by Lyle Rikio Cummings. (Mottl, Joseph) <small>Modified on 12/19/2021 (eta). (Main Document 20 replaced on 1/4/2022) (eta). (Additional attachment(s) added on 1/4/2022: # 1 Declaration of Counsel, # 2 Declaration of Vianna K. Kahanu, # 3 Declaration of Lyle Rikio Cummings, # 4 Memorandum in Support, # 5 Exhibit A (SEALED) , # 6 Exhibit B) (eta). Modified on 1/4/2022 to separately attach supporting documents and seal Exhibit A pursuant to the ECF No. 22 (eta). [1:21-mj-00751-RT]</small> (Entered: 12/17/2021)
12/19/2021		ADVISORY ENTRY. Exhibits Not Attached as Separate PDFS - Please be advised that the exhibits included in Document <u>20</u> MOTION to Modify Conditions of Release <i>on Unsecured Bond</i> , filed by Lyle Rikio Cummings are comprised of several exhibits and not submitted as separate pdf attachments. See <u>Section 5.0 Exhibits, of the CM/ECF Procedures Guide</u> , for additional instructions on how to file exhibits as separate attachments to the main document. No further action is necessary. (eta) [1:21-mj-00751-RT] (Entered: 12/19/2021)
12/21/2021	<u>21</u>	NOTICE OF HEARING ON MOTION in case as to Lyle Rikio Cummings: Defendant's <u>20</u> First MOTION to Modify Conditions of Release on Unsecured Bond Hearing is set for 01/04/2022 at 10:00 a.m. via telephone before MAGISTRATE JUDGE ROM TRADER. Given the United States District Court for the District of Hawaii's latest Temporary General Order Regarding District of Hawaii Response to COVID-19 Emergency and Order Authorizing the Use of Telephonic and Video Hearings pursuant to the CARES Act due to the ongoing COVID-19 pandemic and public health emergency, including the anticipated long term need to maintain certain social distancing and other measures intended to protect the public, court employees, and counsel from being exposed to the COVID-19 virus, while at the same time regulating criminal matters, the hearing will be held telephonically. Parties are to participate via telephone through our AT&T Service. Call-in information for this conference is below. Parties must connect to the conference at least five (5) minutes prior to the scheduled start time of the hearing. Dial in number is 1-888-363-4735 Access Code is 2070326 Defendant's counsel to assure their client's participation at this hearing.

		(bbb) [1:21-mj-00751-RT] (Entered: 12/21/2021)
01/04/2022	22	<p>EP : Telephonic Motion Hearing re <u>20</u> Defendant's <i>MOTION for Order Modifying Conditions of Release on Unsecured Bond or, in the Alternative, Order Granting Compassionate Release</i> ("Motion") as to Lyle Rikio Cummings held on 1/4/2022.</p> <p>Vianna Kahanu*, proposed third-party custodian, participated by telephone.</p> <p><u>Waiver of Physical Presence and Consent to Proceed by Telephone:</u> Defendant not in custody and present by telephone. Defendant waives right to be physically present and consents to appear via telephone. Court conducts colloquy with Defendant to confirm waiver and consent.</p> <p><u>Motion Hearing:</u> Discussion had regarding Defendant's Motion. Court cautioned Mr. Mottl that documents containing protected health care information should not be filed in the public record. The Clerk's Office is directed to SEAL Exhibit A to the Motion.</p> <p>Court takes judicial notice of its records and files and has carefully considered Defendant's Motion ECF <u>20</u>, the Pretrial Services Report, applicable rules and cited legal authority, and the representations and arguments of counsel.</p> <p>No objection by Government.</p> <p>The Court, having carefully considered merits of the instant Motion, finds good cause and GRANTS the Motion to the extent it seeks modification of Defendant's bond conditions.</p> <p>Court deems the portion of the Motion requesting compassionate release WITHDRAWN.</p> <p>Court adopts the recommendation of Pretrial Services. Court added the following condition to the terms of Defendant's pretrial release:</p> <p>(6a) The defendant is placed in the Third-Party Custodianship of: <u>Vianna Kahanu (fiance), Makawao, HI 96768</u>. <u>The Court advised the third-party custodian who was present in court about the above responsibilities and the possible consequences of non-compliance.</u> <u>The third-party custodian acknowledged the above responsibilities.</u></p> <p>Other Conditions: <u>The defendant is permitted to travel to and reside on Maui at Makawao, HI 96768 with the prior approval of Pretrial Services and for a period not to exceed 45 days.</u></p> <p>(10a2) A Bail Review Hearing will be scheduled to review the current conditions of release. Hearing to be scheduled: <u>in approximately 45 days.</u></p> <p>The Court reviewed the above additional release conditions with Defendant. Defendant advised of possible adverse action for failure to comply with any condition, to include issuance of a warrant for Defendant's arrest, revocation of release status and detention pending resolution of the instant matter. Defendant acknowledged understanding the foregoing release condition, his obligation to comply and the consequences of violating any conditions of release.</p> <p>Third Party Custodian, Vianna Kahanu, acknowledged understanding the foregoing release conditions and her obligation to supervise Defendant, ensure Defendant's appearance in Court as required, and to immediately report any violations to the Court.</p> <p>Court sets a Telephonic Bail Hearing for 2/16/2022 at 10:00 a.m. before Magistrate</p>

Wes Reber Porter.

Pursuant to the United States District Court for the District of Hawaii's current Order Authorizing the Use of Telephonic and Video Hearings Pursuant to the CARES Act, the Final Pretrial Conference will be held telephonically via AT&T Connect Audio Conference. Call-in information for this hearing is below. Parties must connect to the conference at least five (5) minutes prior to the scheduled start time of the hearing.

Dial in number: 1-888-278-0296.

Access Code: 8224751.

Mr. Mottl to prepare and submit order to the Court's orders box at Trader_Orders@hid.uscourts.gov within seven (7) days of this hearing.

These minutes will serve as additional conditions of bond.

Defendant to remain on pretrial release conditions, as modified above.

Motion Hearing as to Lyle Rikio Cummings held on 1/4/2022 re 20 First MOTION to Modify Conditions of Release on *Unsecured Bond* filed by Lyle Rikio Cummings ;
granting 20 Motion to Modify Conditions of Release as to Lyle Rikio Cummings (1);
Motions terminated as to Lyle Rikio Cummings: 20 First MOTION to Modify Conditions of Release on *Unsecured Bond* filed by Lyle Rikio Cummings ;
Bail Hearing is set for 2/16/2022 10:00 AM in Telephonic Hearing before MAGISTRATE JUDGE WES REBER PORTER.

(ATT / 10:00-10:20 AM) (MAGISTRATE JUDGE ROM TRADER)
(eta) [1:21-mj-00751-RT] (Entered: 01/04/2022)

01/05/2022	<u>23</u>	ORDER GRANTING FIRST MOTION FOR ORDER MODIFYING CONDITIONS OF RELEASE ON UNSECURED BOND re <u>20</u> , <u>22</u> as to Lyle Rikio Cummings - Signed by MAGISTRATE JUDGE ROM TRADER on 1/5/2022. (eta) [1:21-mj-00751-RT] (Entered: 01/05/2022)
01/19/2022	<u>24</u>	FOURTH STIPULATION EXTENDING TIME WITHIN WHICH THE GOVERNMENT MAY FILE INDICTMENT AND EXCLUDING TIME UNDER THE SPEEDY TRIAL ACT AND WAIVING THE PRELIMINARY HEARING; ORDER as to Lyle Rikio Cummings - Signed by MAGISTRATE JUDGE ROM TRADER on 1/18/2022. Time excluded from 1/18/2022 until 4/1/2022. (eta) [1:21-mj-00751-RT] (Entered: 01/19/2022)
02/16/2022	<u>25</u>	<p>EP : Telephonic Bail Review Hearing as to Lyle Rikio Cummings held on 2/16/2022. AUSA Christine Olson appeared for the plaintiff. Mr. Erik Iverson from U.S. Pretrial Services also appeared. Mr. Joseph Mottl appeared for the defendant.</p> <p>Defendant is not in custody and present via telephone. Mr. Mottl represented that the Defendant waived his right to appear in person and consented to appear via telephone. The Court conducted a colloquy to confirm Defendant's waiver and consent.</p> <p>The Court held a Telephonic Bail Review Hearing. The Court adopted the recommendations of Pretrial Services. Defendant's conditions of pretrial release modified as follows:</p> <p><u>ADD:</u> (7h3) Travel is restricted to: the island of Maui and Oahu with the prior approval of Pretrial Services.</p> <p><u>DELETE:</u> (deleted conditions reflected in the attached minutes)</p>

		<p>These minutes will stand as the conditions of bond. IT IS SO ORDERED.</p> <p>Bail and all other conditions previously set forth for pretrial release shall remain in full force and effect.</p> <p>(ATT / 10:02-10:12 AM) (MAGISTRATE JUDGE WES REBER PORTER) (eta) [1:21-mj-00751-RT] (Entered: 02/16/2022)</p>
03/24/2022	<u>26</u>	INDICTMENT as to Lyle Rikio Cummings (1) count(s) 1, 2. (eta) (Entered: 03/24/2022)
03/24/2022	28	<p>EO: as to Lyle Rikio Cummings - The Telephonic Arraignment is set for April 1, 2022 at 9:30 a.m. before MAGISTRATE JUDGE ROM TRADER.</p> <p>Pursuant to the United States District Court for the District of Hawaii's latest Temporary General Order Regarding District of Hawaii Response to COVID-19 Emergency and Order Authorizing the Use of Telephonic and Video Hearings pursuant to the CARES Act, this hearing will be held telephonically. Parties are to participate via telephone through our AT&T Service. Call-in information for this conference is below. Parties must connect to the conference at least ten (5) minutes prior to the scheduled start time of the hearing.</p> <p>Dial in number is 1-888-363-4735 Access Code is 2070326</p> <p>(MAGISTRATE JUDGE KENNETH J. MANSFIELD)(bbb) (Entered: 03/24/2022)</p>
04/01/2022	30	<p>EP : Telephonic Arraignment and Plea to the Indictment as to Lyle Rikio Cummings (1) Count 1,2 held on 4/1/2022.</p> <p><u>Waiver of Physical Presence and Consent to Proceed by Telephone:</u> Defendant not in custody and present by telephone. Defendant waives right to be physically present and consents to appear via telephone. Court conducts colloquy with Defendant to confirm waiver and consent.</p> <p><u>Arraignment and Plea to the Indictment:</u> Mr. Mottl represents Indictment received and reviewed with Defendant. Defendant understands the general nature of the charges, waives public reading and enters a Plea of Not Guilty to the Indictment. Court confirms same with defendant. NOT GUILTY plea entered.</p> <p><u>Trial date and deadlines given.</u> Jury Selection/Trial: May 23, 2022 at 8:30 a.m. before District Judge Derrick K. Watson Final Pretrial Conference: April 25, 2022 at 9:30 a.m. via telephone before Magistrate Judge Rom Trader Motions due: April 11, 2022 Response due: April 25, 2022 Rule 16.1 Discovery Conference deadline: April 15, 2022</p> <p>Pursuant to the United States District Court for the District of Hawaii's current <i>Order Authorizing the Use of Telephonic and Video Hearings Pursuant to the CARES Act</i>, the Final Pretrial Conference will be held telephonically via AT&T Connect Audio Conference. Call-in information for this hearing is below. Parties must connect to the conference at least five (5) minutes prior to the scheduled start time of the hearing.</p> <p>Dial in number: 1-888-363-4735 000231</p>

		<p>Access Code: 2070326</p> <p>Defendant to remain on previously imposed conditions of pretrial release.</p> <p>Arraignment as to Lyle Rikio Cummings (1) Count 1,2 held on 4/1/2022. Final Pretrial Conference is set for 4/25/2022 09:30 AM in Telephonic Hearing before MAGISTRATE JUDGE ROM TRADER. Jury Selection/Trial is set for 08:30 AM on 5/23/2022 in Aha Kupono before JUDGE DERRICK K. WATSON.</p> <p>(ATT / 9:38-9:42 AM) (MAGISTRATE JUDGE ROM TRADER) (eta) (Entered: 04/01/2022)</p>
04/04/2022	<u>31</u>	Summons Returned Executed on 3/31/2022 as to Lyle Rikio Cummings (eta) (Entered: 04/05/2022)
04/08/2022	<u>32</u>	<p>EO: as to Lyle Rikio Cummings :</p> <p>Parties are in agreement to continue the trial date.</p> <p><u>New trial date and deadlines given.</u></p> <p>Jury Selection/Trial is continued to 8/22/2022 at 8:30 AM before Judge Derrick K. Watson.</p> <p>Final Pretrial Conference is continued to 7/25/2022 at 10:00 AM before Magistrate Judge Rom Trader.</p> <p>Defendant's Motions due: 7/11/2022.</p> <p>Government's Responses due: 7/25/2022.</p> <p>Time <u>to be</u> excluded from 5/23/2022 thru 8/22/2022 from the requirements of the Speedy Trial Act.</p> <p>Christine Olson to prepare Stipulation Continuing Trial and Order Excluding Time for Judge Derrick K. Watson's consideration.</p> <p>Final Pretrial Conference is CONTINUED to 7/25/2022 10:00 AM before MAGISTRATE JUDGE ROM TRADER. Jury Selection/Trial is CONTINUED to 08:30 AM on 8/22/2022 in Aha Kupono before JUDGE DERRICK K. WATSON.</p> <p>(JUDGE DERRICK K. WATSON) (eta) (Entered: 04/08/2022)</p>
04/13/2022	<u>33</u>	<p>STIPULATION AND ORDER CONTINUING TRIAL DATE AND EXCLUDING TIME UNDER THE SPEEDY TRIAL ACT as to Lyle Rikio Cummings - Signed by JUDGE DERRICK K. WATSON on 4/13/2022.</p> <p>(1) the jury selection and trial are set for August 22, 2022; (2) the final pretrial conference is set for July 25, 2022 at 10:00 a.m.; (3) [if applicable] defense motions are due on July 11, 2022, and the government's responses are due on July 25, 2022.</p> <p>***Time Excluded as to Lyle Rikio Cummings: (4/11/2022-8/22/2022) (jo) (Main Document 33 replaced/flatten on 4/26/2022) (eta). (Entered: 04/13/2022)</p>
06/23/2022	<u>34</u>	First MOTION to Continue <i>Trial Date; Declaration of Counsel</i> by Lyle Rikio Cummings. (Mottl, Joseph) Modified on 6/24/2022 (eta). (Entered: 06/23/2022)
06/23/2022	<u>35</u>	NOTICE OF HEARING ON MOTION in case as to Lyle Rikio Cummings - <u>34</u> First MOTION to Continue Hearing is set for June 27, 2022 at 10:00 a.m. by telephone before MAGISTRATE JUDGE KENNETH J. MANSFIELD.

		<p>Pursuant to the United States District Court for the District of Hawaii's latest Temporary General Order Regarding District of Hawaii Response to COVID-19 Pandemic and Order Authorizing the Use of Telephonic and Video Hearings pursuant to the CARES Act, the hearing will be held telephonically. Parties are to participate via telephone through AT&T Connect Audio Conference. Parties must connect to the conference via AT&T Connect Audio Conference at 1-877-848-7030, Access Code: 2123668, at least five (5) minutes prior to the scheduled start time of the hearing.</p> <p>(bbb) (Entered: 06/23/2022)</p>
06/27/2022	36	<p>EP : Motion Hearing re <u>34</u> Defendant's First MOTION to Continue <i>Trial Date</i> as to Lyle Rikio Cummings held by telephone on 6/27/2022. Defendant is not present. Discussion held. Defendant request to continue hearing.</p> <p><u>34</u> Defendant's First Motion to Continue Trial Date is continued to July 5, 2022 at 10:00 a.m. before Magistrate Judge Rom Trader in Courtroom 5.</p> <p>Motion Hearing as to Lyle Rikio Cummings held on 6/27/2022 re <u>34</u> First MOTION to Continue <i>Trial Date</i> filed by Lyle Rikio Cummings: <u>34</u> First MOTION to Continue <i>Trial Date</i> is set for 7/5/2022 10:00 AM in Courtroom 5 before MAGISTRATE JUDGE ROM TRADER.</p> <p>(ATT / 10:05-10:10 AM) (MAGISTRATE JUDGE KENNETH J. MANSFIELD) (eta) (Entered: 06/27/2022)</p>
07/01/2022	37	<p>EO : in case as to Defendant (1) Lyle Rikio Cummings - <u>34</u> First MOTION to Continue <i>Trial Date</i>. The Motion Hearing set for 7/5/2022 at 10:00 AM before MAGISTRATE JUDGE ROM TRADER will be conducted telephonically pursuant to the United States District Court for the District of Hawaii's current <i>Order Authorizing the Use of Telephonic and Video Hearings Pursuant to the CARES Act</i>.</p> <p>Call-in information for this hearing is below. Parties must connect to the conference at least five (5) minutes prior to the scheduled start time of the hearing.</p> <p>Dial in number: 1-888-363-4735. Access Code: 2070326.</p> <p>(MAGISTRATE JUDGE ROM TRADER)(laa) (Entered: 07/01/2022)</p>
07/05/2022	39	<p>EP : Telephonic Motion Hearing re <u>34</u> Defendant's First MOTION to Continue <i>Trial Date</i> ("Motion") as to Lyle Rikio Cummings held on 7/5/2022.</p> <p><u>Waiver of Physical Presence and Consent to Proceed by Telephone:</u> Defendant not in custody and present by telephone. Defendant waives right to be physically present and consents to appear via telephone. Court conducts colloquy with Defendant to confirm waiver and consent.</p> <p><u>Motion Hearing:</u> Trial is currently set for 8/22/2022 before District Judge Watson.</p> <p>Argument had. No objection by Government as to continuance, generally, but Government opposed to Defendant's requested continuance to March 2023. Court inclined to grant motion solely based upon Mr. Mottl's ongoing health situation, but not inclined to continue trial to March 2023.</p> <p>Court engaged in colloquy with Defendant to confirm speedy trial waiver and consent.</p> <p>The Court, having carefully considered merits of the instant Motion, within the context of</p>

the record and applicable legal authorities and the representations and arguments of counsel, finds good cause and GRANTS the Motion based solely on Mr. Mottl's current and ongoing medical condition.

Trial date and deadlines set as follows.

Jury Selection/Trial: December 12, 2022 at 9:00 a.m. before District Judge Derrick K. Watson

Final Pretrial Conference: November 14, 2022 at 1:45 p.m. before Magistrate Judge Kenneth J. Mansfield

Motions due: October 24, 2022

Response due: November 14, 2022

Exclusion of Time Pursuant to Speedy Trial Act:

Pursuant to 18 U.S.C. § 3161(h)(7)(A) and h(7)(B)(i) and (iv), the Court finds that the ends of justice served by the exclusion of time from August 22, 2022 to and including December 12, 2022 outweigh the best interests of the public and the defendant in a speedy trial.

The Court finds that the failure to grant such a continuance would be likely to "result in a miscarriage of justice" and/or would deny counsel for the defendant... the reasonable time necessary for effective preparation, taking into account the exercise of due diligence." See, 18 U.S.C. § 3161(h)(7)(B)(i) and (iv).

Mr. Mottl to prepare and submit a proposed order to trader_orders@hid.uscourts.gov within seven days. Counsel to confer and submit appropriate stipulation as to basis for Speedy Trial waiver.

Defendant to remain on previously imposed conditions of pretrial release.

Motion Hearing re 34 Defendant's First MOTION to Continue Trial Date as to Lyle Rikio Cummings held on 7/5/2022, granting 34 Motion to Continue as to Lyle Rikio Cummings (1).

Motions terminated as to Lyle Rikio Cummings: 34 First MOTION to Continue Trial Date filed by Lyle Rikio Cummings.

Final Pretrial Conference is CONTINUED to 11/14/2022 01:45 PM in Courtroom 6 before MAGISTRATE JUDGE KENNETH J. MANSFIELD.

Jury Selection/Trial is CONTINUED to 09:00 AM on 12/12/2022 in Aha Kupono before JUDGE DERRICK K. WATSON.

(ATT / 10:05-10:22 AM) (MAGISTRATE JUDGE ROM TRADER)
(eta) (Entered: 07/05/2022)

10/24/2022	40	<p>EO : as to Lyle Rikio Cummings - Telephone Conference is set for 11/4/2022 at 11:00 AM before MAGISTRATE JUDGE ROM TRADER.</p> <p>Pursuant to the United States District Court for the District of Hawaii's current <i>Order Authorizing the Use of Telephonic and Video Hearings Pursuant to the CARES Act</i>, this hearing will be held telephonically. Call-in information for this hearing is below. Parties must connect to the conference at least five (5) minutes prior to the scheduled start time of the hearing.</p> <p>PARTICIPANTS: Dial: 1-833-568-8864. Meeting ID: 161 5641 6035.</p> <p>OBSERVERS: Dial: 1-650-479-3207. Access Code: 1604373010.</p> <p>(MAGISTRATE JUDGE ROM TRADER)(laa) (Entered: 10/24/2022)</p>
10/31/2022	41	ORDER GRANTING IN PART DEFENDANT'S FIRST MOTION TO CONTINUE TRIAL DATE re <u>34</u> - Signed by MAGISTRATE JUDGE ROM TRADER on 10/31/2022.

		<p>The Defendant's motion is granted in part, but not as to the length of the continuance originally requested. The trial date and deadlines are set as follows.</p> <p>Jury Selection/Trial: December 12, 2022, at 9:00 a.m. before District Judge Derrick K. Watson;</p> <p>Final Pretrial Conference: November 14, 2022, at 1:45 p.m. before Magistrate Judge Kenneth J. Mansfield;</p> <p>Motions due: October 24, 2022;</p> <p>Responses due: November 14, 2022.</p> <p>Follows oral order of 7/5/2022 Hearing at ECF 39.</p> <p>(jni) (Entered: 10/31/2022)</p>
10/31/2022	42	<p>EO : The Telephone Conference set for 11/4/2022 at 11:00 AM before Magistrate Judge Trader is VACATED.</p> <p>(MAGISTRATE JUDGE ROM TRADER)(laa) (Entered: 10/31/2022)</p>
11/07/2022	43	<p>EO: as to Lyle Rikio Cummings - Telephonic Status Conference - MJ is set for 11/08/2022 at 11:00 a.m. before MAGISTRATE JUDGE KENNETH J. MANSFIELD.</p> <p>Pursuant to the United States District Court for the District of Hawaii's latest Temporary General Order Regarding District of Hawaii Response to COVID-19 Pandemic and Order Authorizing the Use of Telephonic and Video Hearings pursuant to the CARES Act, the hearing will be held telephonically. Parties are to participate via telephone through NEW <u>ZOOM</u> Teleconference. Parties must connect to the conference via Zoom Audio Conference at 1-833-568-8864, Access Code: 160 8983 1896, at least five (5) minutes prior to the scheduled start time of the hearing. Observers may call in on a separate line at 1-650-479-3207, Code: 1609303683.</p> <p>OBSERVERS: Call-in:1-650-479-3207, Code: 160 930 3683</p> <p>Defendant's counsel to assure their client's participation at this hearing.</p> <p>(MAGISTRATE JUDGE KENNETH J. MANSFIELD)(bbb) (Entered: 11/07/2022)</p>
11/08/2022	44	<p>Second MOTION to Continue <i>Trial and Extend Pretrial Motions Deadline</i>; Declaration of Counsel; Exhibit A by Lyle Rikio Cummings. (Mottl, Joseph) <small>Modified on 11/10/2022 (eta).</small> (Entered: 11/08/2022)</p>
11/08/2022	45	<p>EP : Telephonic Status Conference - MJ as to Lyle Rikio Cummings held on 11/8/2022. Defendant not in custody, present via telephone.</p> <p>Discussion held regarding Mr. Mottl's current health condition and his ability to represent Mr. Cummings in this case.</p> <p>44 Defendant's Second Motion to Continue Trial Date and Extend Pretrial Motions Deadline is set for November 10, 2022 at 10:00 am before Magistrate Judge Kenneth J. Mansfield via telephone.</p> <p>Government's opposition is due by 4:00 p.m. on November 9, 2022.</p> <p>Parties are to participate via telephone through ZOOM Teleconference. Parties must connect to the conference via Zoom Audio Conference at 1-833-568-8864, Access Code: 160 8983 1896, at least five (5) minutes prior to the scheduled start time of the</p>

		<p>hearing.</p> <p>Observers may call in on a separate line at 1-650-479-3207, Code: 1609303683.</p> <p>Defendant's counsel to assure their client's participation at this hearing.</p> <p>Status Conference - MJ as to Lyle Rikio Cummings held on 11/8/2022. <u>44</u> Second MOTION to Continue <i>Trial and Extend Pretrial Motions Deadline</i> is set for 11/10/2022 10:00 AM in Telephonic Hearing before MAGISTRATE JUDGE KENNETH J. MANSFIELD.</p> <p>(ZOOM / 11:00-11:17 AM) (MAGISTRATE JUDGE KENNETH J. MANSFIELD) (eta) (Entered: 11/09/2022)</p>
11/09/2022	<u>46</u>	<p>RESPONSE to Motion by USA as to Lyle Rikio Cummings re <u>44</u> Second MOTION to Continue <i>Trial and Extend Pretrial Motions Deadline</i> /COS (Perlmutter, Rebecca) (Entered: 11/09/2022)</p>
11/10/2022	<u>47</u>	<p>EP : Motion Hearing re <u>44</u> Second MOTION to Continue <i>Trial and Extend Pretrial Motions Deadline</i> as to Lyle Rikio Cummings held on 11/10/2022. Defendant not in custody, present via telephone.</p> <p>Discussion held regarding the Government's inability to contact Mr. Mottl's and Mr. Mottl's efforts in managing his emails and phone calls.</p> <p>Court taking judicial notice of the documents on file and having considered the comments of counsel, the Court GRANTS <u>44</u> Defendant's Second Motion to Continue Trial Date and Extend Pretrial Motions Deadline is GRANTED.</p> <p><u>New dates are given as follows:</u></p> <p>Jury Selection/Trial: March 6, 2023 at 9:00 a.m. before District Judge Derrick K. Watson in Aha Kupono</p> <p>Final Pretrial Conference: February 6, 2023 at 10:00 a.m. before Magistrate Judge Rom Trader by telephone</p> <p>Motions: January 23, 2023</p> <p>Response: February 6, 2023</p> <p><u>Hearing before Magistrate Judge Rom Trader:</u></p> <p>Parties and other participants must call-in at least five (5) minutes prior to the scheduled start time of the conference. Call-in instructions are below:</p> <p style="padding-left: 40px;">Dial in number: 1-833-568-8864 (toll-free).</p> <p style="padding-left: 40px;">Meeting ID: 161 5641 6035.</p> <p>The court finds that the ends of justice served by such an action outweigh the best interest of the public and the defendant in speedy trial. The court orders that the period from December 12, 2022 to and including March 6, 2023 be excluded from computation under the Speedy Trial Act as a failure to grant the continuance would unreasonably deny counsel for the defendant reasonable time necessary for effective preparation, taking into account the exercise of due diligence.</p> <p>Government to prepare order.</p> <p>Phone line is cleared. Government and non-parties transferred into Break Out Session. The Court confirms that only Defendant, Mr. Mottl and Court staff are in the main conference. Conference has been locked.</p>

		<p>(SEALED HEARING HELD 10:40 - 10:55) Sealed Discussion held between Defendant Lyle Rikio Cummings, Defendant's counsel Joseph R. Mottl, III and the Court. Court conducted a colloquy with Mr. Mottl and Mr. Cummings.</p> <p>Government and non-parties are transferred from the Break Out Session back into the main conference. Conference has been unlocked.</p> <p>Court sets a Telephonic Status Conference for December 14, 2022 at 10:00 a.m. before Magistrate Judge Kenneth J. Mansfield.</p> <p>Pursuant to the United States District Court for the District of Hawaii's latest Temporary General Order Regarding District of Hawaii Response to COVID-19 Pandemic and Order Authorizing the Use of Telephonic and Video Hearings pursuant to the CARES Act, the hearing will be held telephonically. Parties are to participate via telephone through ZOOM Teleconference. Parties must connect to the conference via Zoom Audio Conference at <u>1-833-568-8864</u>, Access Code: <u>160 8983 1896</u>, at least five (5) minutes prior to the scheduled start time of the hearing.</p> <p>Observers may call in on a separate line at 1-650-479-3207, Code: 1609303683.</p> <p>Motion Hearing re <u>44</u> Second MOTION to Continue <i>Trial and Extend Pretrial Motions Deadline</i> filed by Lyle Rikio Cummings ; granting <u>44</u> Motion to Continue as to Lyle Rikio Cummings (1); Motions terminated as to Lyle Rikio Cummings: <u>44</u> Second MOTION to Continue <i>Trial and Extend Pretrial Motions Deadline</i> filed by Lyle Rikio Cummings.; Final Pretrial Conference is CONTINUED to 2/6/2023 10:00 AM in Telephonic Hearing before MAGISTRATE JUDGE ROM TRADER. Jury Selection/Trial is CONTINUED to 09:00 AM on 3/6/2023 in Aha Kupono before CHIEF JUDGE DERRICK K. WATSON. Telephone Conference is set for 12/14/2022 10:00 AM in Telephonic Hearing before MAGISTRATE JUDGE KENNETH J. MANSFIELD.</p> <p>(ZOOM / 10:00-10:58 AM) (MAGISTRATE JUDGE KENNETH J. MANSFIELD) (eta) (Entered: 11/10/2022)</p>
11/17/2022	48	<p>NOTICE OF HEARING as to Lyle Rikio Cummings:</p> <p>Court sets a Status Conference for 11/22/2022 at 10:30 a.m. in Courtroom 6 before MAGISTRATE JUDGE KENNETH J. MANSFIELD. All parties are required to appear for this hearing in person.</p> <p>Defendant's counsel to assure their client's participation at this hearing.</p> <p>(bbb) (Entered: 11/17/2022)</p>
11/17/2022	49	<p>EO: as to Lyle Rikio Cummings -</p> <p>The Status Conference previously set for 11/22/2022 IS CONTINUED TO 11/23/2022 at 10:30 a.m. in Courtroom 6 before MAGISTRATE JUDGE KENNETH J. MANSFIELD. All parties are required to appear for this hearing in person.</p> <p>Defendant's counsel to assure their client's participation at this hearing.</p> <p>(MAGISTRATE JUDGE KENNETH J. MANSFIELD)(bbb) (Entered: 11/17/2022)</p>
11/18/2022	50	<p>EO: In light of the Mr. Mottl's compliance in responding to the Government's email regarding the Stipulation to Continue Order, the Status Conference set for 11/23/2022 is hereby VACATED. (MAGISTRATE JUDGE KENNETH J. MANSFIELD)(bbb) (Entered: 11/18/2022)</p>
11/18/2022	51	<p>STIPULATION AND ORDER CONTINUING TRIAL DATE AND EXCLUDING TIME UNDER THE SPEEDY TRIAL ACT as to Lyle Rikio Cummings - Signed by</p>

		<p>MAGISTRATE JUDGE KENNETH J. MANSFIELD on 11/18/2022.</p> <p>For the reasons stated, IT IS HEREBY ORDERED:</p> <p>(1) the jury selection and trial are set for March 6, 2023 at 9:00am before the Honorable District Judge Derrick K. Watson;</p> <p>(2) the final pretrial conference is set for February 6, 2023 at 10:00am before the Honorable Magistrate Judge Rom Trader;</p> <p>(3) defense motions are due on January 23. 2023, and the government's responses are due on February 6, 2023.</p> <p>Time excluded from 12/12/2022 until 3/6/2023.</p> <p>(eta) (Entered: 11/18/2022)</p>
12/13/2022	<u>52</u>	<p>EO: as to Lyle Rikio Cummings - Due to a conflict in the Court's schedule, the Telephone Conference previously set for 10:00 a.m. IS CONTINUED TO 10:30 a.m. on the same date of 12/14/2022 before MAGISTRATE JUDGE KENNETH J. MANSFIELD.</p> <p>Pursuant to the United States District Court for the District of Hawaii's latest Temporary General Order Regarding District of Hawaii Response to COVID-19 Pandemic and Order Authorizing the Use of Telephonic and Video Hearings pursuant to the CARES Act, the hearing will be held telephonically. Parties are to participate via telephone through <u>ZOOM Teleconference</u>. Parties must connect to the conference via <u>Zoom Audio Conference at 1-833-568-8864, Access Code: 160 8983 1896</u>, at least five (5) minutes prior to the scheduled start time of the hearing.</p> <p><i>Observers may call in on a separate line at 1-650-479-3207, Code: 160 930 3683.</i></p> <p>(MAGISTRATE JUDGE KENNETH J. MANSFIELD)(bbb) (Entered: 12/13/2022)</p>
12/13/2022	<u>53</u>	<p>NOTICE of Government's Request for Court Colloquy with Defendant Regarding Government's Plea Offer by USA as to Lyle Rikio Cummings (Perlmutter, Rebecca) (Entered: 12/13/2022)</p>
12/14/2022	<u>54</u>	<p>EP : TELEPHONIC STATUS CONFERENCE held. Defendant not in custody, present via telephone. Discussion held.</p> <p>Colloquy made with Mr. Mottl on his recovery. Mr. Mottl confirms that he does not anticipate to request for any continuance on the current schedule. The Court also conducted a colloquy with the Defendant regarding the government's plea offer. Phone line is cleared. Government and non-parties transferred into Break Out Session.</p> <p>The Court confirms that only Defendant, Mr. Mottl and Court staff are in the main conference. Conference has been locked.</p> <p>(SEALED LAFLER HEARING HELD 10:50 - 10:54)</p> <p>Sealed Discussion held between Defendant Lyle Rikio Cummings, Defendant's counsel Joseph R. Mottl, III and the Court. Court conducted a colloquy with Mr. Mottl and Mr. Cummings.</p> <p>Government and non-parties are transferred from the Break Out Session back into the main conference. Conference has been unlocked.(ZOOM / 10:34-10:54) (MAGISTRATE JUDGE KENNETH J. MANSFIELD)(apg) (Entered: 12/14/2022)</p>
01/23/2023	<u>55</u>	<p>EO: As to Defendant Lyle Rikio Cummings, Final Pretrial Conference is set for 2/24/2023 at 09:00 AM in Aha Kupono before CHIEF JUDGE DERRICK K. WATSON.</p>

		(CHIEF JUDGE DERRICK K. WATSON)(tyk) (Entered: 01/23/2023)
02/03/2023	<u>56</u>	EO : as to Lyle Rikio Cummings - the Final Pretrial Conference set for 2/6/2023 at 10:00 AM before MAGISTRATE JUDGE ROM TRADER shall be held in person in Courtroom 5. Defendant's presence is WAIVED. (MAGISTRATE JUDGE ROM TRADER)(laa) (Entered: 02/03/2023)
02/06/2023	<u>57</u>	Third MOTION to Continue <i>Trial and Extend Pretrial Motions Deadline</i> ; Declaration of Counsel; Attachments "A" and "B" by Lyle Rikio Cummings. (Mottl, Joseph) Modified on 2/7/2023 (eta). (Entered: 02/06/2023)
02/06/2023	<u>58</u>	EP : Final Pretrial Conference as to Lyle Rikio Cummings not held on 2/6/2023. Defendant's presence is waived. Discussion had regarding ECF <u>57</u> Defendant's Third Motion to Continue Trial Date and Extend Pretrial Motions Deadline ("Motion"). Defendant requests continuance of trial from 3/6/2023 to 6/5/2023. Court inquires as to Government's position on the Motion. While the Government is sympathetic to counsel's health issues, Government has concerns about the history of prior defense continuances and impact on Speedy Trial. Court directs parties to confer regarding whether a stipulation to continue trial may be possible, instead of proceeding on <i>Motion</i> . If parties reach agreement, stipulation to be filed by no later than 2/10/2023 . If parties are unable to agree, Government's response to <i>Motion</i> due by 2/13/2023. Court sets Motion Hearing for 2/15/2023 at 10:00 a.m. before Magistrate Judge Trader in Courtroom 5. Final Pretrial Conference as to Lyle Rikio Cummings held on 2/6/2023. <u>57</u> Third MOTION to Continue <i>Trial and Extend Pretrial Motions Deadline</i> is set for 2/15/2023 10:00 AM in Courtroom 5 before MAGISTRATE JUDGE ROM TRADER. (FTR-CT 5 / 10:00-10:07 AM) (MAGISTRATE JUDGE ROM TRADER) (eta) (Entered: 02/06/2023)
02/06/2023	<u>59</u>	EO : in case as to Lyle Rikio Cummings <u>57</u> Third MOTION to Continue <i>Trial and Extend Pretrial Motions Deadline</i> . Due to a conflict in the Court's schedule, the Motion Hearing set for 2/15/2023 at 10:00 AM in Courtroom 5 before MAGISTRATE JUDGE ROM TRADER is ADVANCED to 09:30 AM the same day (2/25/2023). (MAGISTRATE JUDGE ROM TRADER)(laa) (Entered: 02/06/2023)
02/13/2023	<u>60</u>	RESPONSE to Motion by USA as to Lyle Rikio Cummings re <u>57</u> Third MOTION to Continue <i>Trial and Extend Pretrial Motions Deadline / Certificate of Service</i> (Attachments: # <u>1</u> Declaration of Rebecca A. Perlmutter)(Perlmutter, Rebecca) (Entered: 02/13/2023)
02/14/2023	<u>61</u>	EO : Pursuant to defense counsel's 2/14/2023 request, Defendant Lyle Rikio Cummings is permitted to participate in the Motion Hearing set for 2/15/2023 at 9:30 a.m. in Courtroom 5 before Magistrate Judge Trader via telephone. Mr. Mottl to appear in person.

		<p>Mr. Mottl to provide the following dial in information to Defendant for purposes of the 2/15/2023 Motion Hearing. Defendant to call in at least five (5) minutes prior to the scheduled start time of the conference.</p> <p>Dial in number: 1-833-568-8864 (toll-free). Meeting ID: 161 5641 6035.</p> <p>(MAGISTRATE JUDGE ROM TRADER)(laa) (Entered: 02/14/2023)</p>
02/15/2023	62	<p>EP : Motion Hearing re <u>57</u> Defendant's <i>Third MOTION to Continue Trial and Extend Pretrial Motions Deadline</i> ("Motion") as to Lyle Rikio Cummings held on 2/15/2023.</p> <p><u>Waiver of Physical Presence and Consent to Proceed by Telephone:</u> Defendant not in custody and present by telephone. Defendant waives right to be physically present and consents to appear via telephone. Court conducts colloquy with Defendant to confirm waiver and consent.</p> <p><u>Motion Hearing:</u> The Court takes judicial notice of the records and files, including the <i>Motion</i> ECF <u>57</u>, Government's <i>Response</i> ECF <u>60</u>, the recording of the 12/14/2022 Telephonic Status Conference before Magistrate Judge Mansfield, applicable legal authority, and the representations and arguments of counsel.</p> <p>Arguments heard. The Court, having carefully considered merits of the instant <i>Motion</i>, within the context of the record and applicable legal authorities and the representations and arguments of counsel, finds good cause and GRANTS the <i>Motion</i>, over the Government's objection.</p> <p>The Court ADVISES Mr. Mottl and Defendant that this shall be the <u>LAST CONTINUANCE FOR THE DEFENSE</u>. No further defense continuances will be entertained.</p> <p><u>To monitor trial readiness, the Court ORDERS:</u></p> <p>periodic Status Conferences on 3/15/2023, 4/14/2023, and 5/12/2023 at 9:30 a.m. before the respective duty Magistrate Judge; and</p> <p>Mr. Mottl to conduct bi-weekly telephone conferences with Government counsel, commencing no later than 3/1/2023 and every 2 weeks, thereafter;</p> <p>Should Mr. Mottl's health cause uncertainty about his ability to render effective representation, Mr. Mottl to file appropriate motion to withdraw as counsel without delay; and</p> <p>Otherwise, parties are expected to diligently prepare for trial as scheduled.</p> <p>The Court finds good cause to re-open the motions and response deadlines.</p> <p>The Court enters the following criminal scheduling order:</p> <p><u>Criminal Scheduling Order:</u></p> <ol style="list-style-type: none"> 1. Jury Selection/Trial before Chief District Judge Derrick K. Watson: June 5, 2023 at 9:00 a.m. 2. Trial Conference before Chief District Judge Derrick K. Watson: May 26, 2023 at 9:00 a.m. 3. Joint Trial Presentation Statement due: May 19, 2023

(The issued deadlines are detailed in the attached minutes. Please refer to the attached minutes.)

These minutes shall stand in place of a separately filed Criminal Scheduling Order as required by CrimLR2.1.

Exclusion of Time Pursuant to Speedy Trial Act:

Pursuant to 18 U.S.C. § 3161(h)(7)(A) and h(7)(B)(i) and (iv), the Court finds that the ends of justice served by the exclusion of time from **March 6, 2023 to, and including June 5, 2023** outweigh the best interests of the public and the defendant in a speedy trial.

The Court finds that the failure to grant such a continuance would be likely to "result in a miscarriage of justice" and/or "would deny counsel for the defendant... the reasonable time necessary for effective preparation, taking into account the exercise of due diligence." See, 18 U.S.C. § 3161(h)(7)(B)(i) and (iv).

Government to prepare and submit proposed order to Trader_Orders@hid.uscourts.gov within seven (7) days.

Defendant to remain on previously imposed conditions of pretrial release.

Motion Hearing as to Lyle Rikio Cummings held on 2/15/2023 re 57 Third MOTION to Continue *Trial and Extend Pretrial Motions Deadline* filed by Lyle Rikio Cummings ;
granting 57 Motion to Continue as to Lyle Rikio Cummings (1);
Motions terminated as to Lyle Rikio Cummings: 57 Third MOTION to Continue *Trial and Extend Pretrial Motions Deadline* filed by Lyle Rikio Cummings.;
Jury Selection/Trial is CONTINUED to 09:00 AM on 6/5/2023 in Aha Kupono before CHIEF JUDGE DERRICK K. WATSON.
Pretrial Conference is set for 5/26/2023 09:00 AM in Aha Kupono before CHIEF JUDGE DERRICK K. WATSON.

(FTR-CT 5 / 9:30-10:05 AM) (MAGISTRATE JUDGE ROM TRADER)
(eta) (Entered: 02/15/2023)

02/22/2023	<u>63</u>	<p>ORDER CONTINUING TRIAL DATE, AND SETTING PRETRIAL MOTIONS DEADLINES AND EXCLUDING TIME UNDER THE SPEEDY TRIAL ACT re <u>57</u> as to Lyle Rikio Cummings - Signed by MAGISTRATE JUDGE ROM TRADER on 2/22/2023.</p> <p>IT IS HEREBY ORDERED:</p> <p>(1) jury selection and trial are set for June 5, 2023 at 9:00 a.m. before the Honorable Derrick K. Watson, United States Chief District Judge; (2) the trial conference is set for May 26, 2023 at 9:00 a.m. before the Honorable Derrick K. Watson, United States Chief District Judge; (3) joint trial presentation statement is due on May 19, 2023; (4) Defendant's motions are to be filed by March 15, 2023 and government's response is due March 29, 2023.</p> <p>Time excluded from 3/6/2023 until 6/5/2023.</p> <p>(eta) (Entered: 02/22/2023)</p>
03/13/2023	<u>64</u>	CRIMINAL SCHEDULING ORDER as to Lyle Rikio Cummings - Signed by CHIEF JUDGE DERRICK K. WATSON on 3/13/2023. (eta) (Entered: 03/13/2023)
03/15/2023	<u>65</u>	<p>EO: as to Lyle Rikio Cummings - Pursuant to ECF No. <u>62</u> , the Court sets a Status Conference - MJ for 3/20/2023 at 09:30 AM as Telephonic Hearing before MAGISTRATE JUDGE WES REBER PORTER.</p> <p>Pursuant to the current Order Authorizing the Use of Telephonic and Video Hearings pursuant to the CARES Act, this hearing will be held telephonically. Parties are to participate via telephone through Zoom. Parties/participants must connect to the</p>

		<p>conference via Zoom (audio only) at 1-833-568-8864 with Access Code 161 0084 2470, at least ten (10) minutes prior to the scheduled start time of the hearing.</p> <p>The public may listen to the proceedings by dialing the Public Dial-in number at 1-650-479-3207 and entering Access code: 1601263445.</p> <p>(MAGISTRATE JUDGE WES REBER PORTER) (jo) (Entered: 03/15/2023)</p>
03/16/2023	<u>66</u>	MOTION for Extension of Time to File <i>Pretrial Motions</i> , MOTION for Leave to File <i>Pretrial Motions</i> by Lyle Rikio Cummings. (Mottl, Joseph) (Entered: 03/16/2023)
03/20/2023	<u>67</u>	RESPONSE in Opposition by USA as to Lyle Rikio Cummings re <u>66</u> MOTION for Extension of Time to File <i>Pretrial Motions</i> MOTION for Leave to File <i>Pretrial Motions</i> (Perlmutter, Rebecca) Modified on 3/21/2023 The response is signed by Christine Olson, AUSA and the certificate of service, by the e-filer, Rebecca Perlmutter, AUSA (eta). (Entered: 03/20/2023)
03/20/2023	<u>68</u>	<p>EP: STATUS CONFERENCE - MJ as to Defendant Lyle Rikio Cummings held.</p> <p>AUSA Christine Olson appeared on behalf of the United States.</p> <p>Mr. Joseph Mottl, III appeared on behalf of Defendant.</p> <p>Defendant not in custody and present by telephone. Mr. Mottle confirms defendant's consent to appear by telephone.</p> <p>The Court held a Status Conference.</p> <p>Discussion held regarding Mr. Mottl's current health condition and trial readiness.</p> <p>The Court inquired as to ECF No. <u>66</u> <i>Defendant's Motion for Extension of Time to File Pretrial Motions</i>, ("Motion").</p> <p>SEALED HEARING with defense counsel and defendant only. (9:55 am - 10:15 am)</p> <p>The Court GRANTS the <i>Motion</i> and orders Mr. Mottl to file all pretrial motions by Friday, March 24, 2023. If the pretrial motions are not filed by March 24, 2023, the Court will sua sponte order the withdrawal of Mr. Mottl as counsel in this matter and defendant will seek new counsel or have CJA counsel appointed. The Court further advises the defense there will be no further continuances related to any matter in this case.</p> <p>Defendant to remain on previously imposed conditions of pretrial release.</p> <p>(ZOOM / 9:36 am - 10:28 am)</p> <p>(MAGISTRATE JUDGE WES REBER PORTER) (jo) (Entered: 03/20/2023)</p>
03/24/2023	<u>69</u>	MOTION to Suppress <i>Evidence</i> ; Declaration of Counsel; Memorandum of Points and Authorities by Lyle Rikio Cummings. (Mottl, Joseph) Modified on 3/28/2023 (eta). (Entered: 03/24/2023)
03/24/2023	<u>70</u>	MOTION to Suppress <i>Statements</i> ; Declaration of Counsel; Memorandum of Points and Authorities by Lyle Rikio Cummings. (Mottl, Joseph) Modified on 3/28/2023 (eta). (Entered: 03/24/2023)
03/28/2023	<u>71</u>	EO: An Evidentiary Hearing on Defendant Lyle Rikio Cummings' [69] Motion to Suppress Evidence and <u>70</u> Motion to Suppress Statements is set for 4/21/2023 at 10:00 AM in Aha Kupono before CHIEF JUDGE DERRICK K. WATSON. The briefing

		<p>schedule is set forth: Govt.'s Opposition shall be filed by 4/14/2023; and Defendant's Reply shall be filed by 4/19/2023.</p> <p>(CHIEF JUDGE DERRICK K. WATSON) (tyk) (Entered: 03/28/2023)</p>
03/28/2023	<u>72</u>	<p>EO: The Judges of the United States District Court have requested that real-time reporting services be provided to them during evidentiary hearings involving the taking of testimony from a live witness.</p> <p>In order to provide the Court with an accurate and more useful realtime record of proceedings, counsel is directed to submit the following information to the courtroom deputy by 4/17/2023:</p> <p>1. Names of parties and attorneys to the action; 2. Witness list; and 3. Exhibit list.</p> <p>The information will be shared with the court reporter to enable them to program computers with steno outlines unique to your personal case.</p> <p>(CHIEF JUDGE DERRICK K. WATSON) (tyk) (Entered: 03/28/2023)</p>
04/14/2023	<u>73</u>	<p>EP: FURTHER STATUS CONFERENCE held on 04/14/2023.</p> <p>Defendant is not present, presence waived for purposes of this hearing.</p> <p>Discussion held. Ms. Olson updates the Court on communication between counsel and Government request to set phone calls with Mr. Mottl every other Wednesday at noon.</p> <p>The Court orders that the parties participate in bi-weekly calls on Wednesdays starting on April 19, 2023 at noon.</p> <p>(CT 6 - FTR / 9:30 - 9:37) (MAGISTRATE JUDGE KENNETH J. MANSFIELD)(bbb) (Entered: 04/14/2023)</p>
04/17/2023	<u>74</u>	<p>RESPONSE in Opposition by USA as to Lyle Rikio Cummings re <u>69</u> MOTION to Suppress <i>Evidence / Certificate of Service</i> (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5 - Video , # <u>6</u> Exhibit 6 - Video , # <u>7</u> Exhibit 7 - Video)(Olson, Christine)</p> <p>Exhibits 5, 6 & 7 (video exhibits) are retained by the Clerk's Office. <small>Modified on 4/18/2023 (eta)</small> (Entered: 04/17/2023)</p>
04/17/2023	<u>75</u>	<p>RESPONSE in Opposition by USA as to Lyle Rikio Cummings re <u>70</u> MOTION to Suppress <i>Statements / Certificate of Service</i> (Attachments: # <u>1</u> Exhibit 1 - Video , # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4 - Video , # <u>5</u> Exhibit 5 - Video , # <u>6</u> Declaration of Andrew Cabral, # <u>7</u> Exhibit A, # <u>8</u> Exhibit B, # <u>9</u> Exhibit C, # <u>10</u> Exhibit D)(Olson, Christine)</p> <p>Exhibits 1, 4 & 5 (video exhibits) are retained by the Clerk's Office. <small>Modified on 4/18/2023 (eta)</small> (Entered: 04/17/2023)</p>
04/17/2023	<u>76</u>	<p>NOTICE of <i>Disclosure of Expert Witnesses</i> by USA as to Lyle Rikio Cummings (Olson, Christine) (Entered: 04/17/2023)</p>

04/18/2023		ADVISORY ENTRY. Personal Identifiers - Please be advised that an exhibit submitted in support of <u>75</u> United States' Opposition to Defendant's Motion to Suppress Statements, contains personal identifiers. To comply with the policy of the Judicial Conference of the United States and the E-Government Act of 2002, and to promote electronic access to case files while also protecting personal privacy and other legitimate interests, parties shall refrain from including or shall partially redact when inclusion is necessary. The filing party may submit a redacted version of the affected exhibit. <u>For e-filing purposes</u> , select the filing event "redacted document" from the "Other Documents" filing category. When prompted, please "link" the redacted exhibit to ECF No. 75. Please include an appropriate caption cover page (that includes counsel's identification, the case number and document caption) with the filing of any redacted exhibit. (eta) (Entered: 04/18/2023)
04/19/2023	<u>77</u>	REDACTION (<i>Redacted Exhibit 2</i>) by USA as to Lyle Rikio Cummings to <u>75</u> United States' Opposition to Defendant's Motion to Suppress Statements filed by USA (Attachments: # <u>1</u> Exhibit 2 (Redacted))(Olson, Christine) Modified on 4/20/2023 (eta). (Entered: 04/19/2023)
04/20/2023	<u>78</u>	WITNESS LIST <i>for Evidentiary Hearing</i> by USA as to Lyle Rikio Cummings. (Olson, Christine) Modified on 4/21/2023 (eta). (Entered: 04/20/2023)
04/20/2023	<u>79</u>	EXHIBIT LIST <i>for Evidentiary Hearing</i> by USA as to Lyle Rikio Cummings. (Olson, Christine) Modified on 4/21/2023 (eta). (Entered: 04/20/2023)
04/21/2023	<u>80</u>	MEMORANDUM <i>in Support Defendant's Supplemental Authorities for Motions to Suppress Statements and Evidence re <u>69</u> , <u>70</u></i> by Lyle Rikio Cummings (Mottl, Joseph) Modified on 4/24/2023 (eta). (Entered: 04/21/2023)
04/21/2023	<u>81</u>	<p>EP : Motion Hearing re <u>69</u> Defendant's MOTION to Suppress <i>Evidence</i> and <u>70</u> MOTION to Suppress <i>Statements</i> ("Motions") as to Lyle Rikio Cummings held on 4/21/2023. Defendant Lyle Cummings present, not in custody.</p> <p>Court addressed defense's late filing of supplemental authorities for Motions.</p> <p>Arguments heard. <u>69</u> Defendant's Motion to Suppress Evidence and <u>70</u> Motion to Suppress Statements taken under advisement. Court to issue a written order.</p> <p>In advance Court stated for the record that both Motions are denied.</p> <p>Due to simultaneous jury trials scheduled for 6/5/2023, with the consent of the parties Jury Selection/Trial scheduled for 6/5/2023 will be continued to 6/7/2023 at 9:00 a.m. in Aha Kupono before Chief Judge Derrick K. Watson.</p> <p>Motion Hearing as to Lyle Rikio Cummings held on 4/21/2023 re <u>69</u> MOTION to Suppress <i>Evidence</i> filed by Lyle Rikio Cummings, <u>70</u> MOTION to Suppress <i>Statements</i> filed by Lyle Rikio Cummings; denying <u>69</u> Motion to Suppress as to Lyle Rikio Cummings (1); denying <u>70</u> Motion to Suppress as to Lyle Rikio Cummings (1); Motions terminated as to Lyle Rikio Cummings: <u>69</u> MOTION to Suppress <i>Evidence</i> filed by Lyle Rikio Cummings, <u>70</u> MOTION to Suppress <i>Statements</i> filed by Lyle Rikio Cummings. Jury Selection/Trial is CONTINUED to 09:00 AM on 6/7/2023 in Aha Kupono before CHIEF JUDGE DERRICK K. WATSON.</p> <p>(Reporter-Gloria Bediamol) (CHIEF JUDGE DERRICK K. WATSON) (eta) (Entered: 04/21/2023)</p>
05/08/2023	<u>82</u>	EXHIBIT LIST by USA as to Lyle Rikio Cummings. (Olson, Christine) (Entered: 05/08/2023)
05/08/2023	<u>83</u>	WITNESS LIST by USA as to Lyle Rikio Cummings. (Olson, Christine) (Entered: 05/08/2023)
05/08/2023	<u>84</u>	STIPULATION <i>of Fact</i> (Olson, Christine) (Entered: 05/08/2023)

05/09/2023	<u>85</u>	ORDER DENYING FIRST MOTION TO SUPPRESS re <u>69</u> , <u>81</u> as to Lyle Rikio Cummings - Signed by CHIEF JUDGE DERRICK K. WATSON on 5/9/2023. (eta) (Entered: 05/09/2023)
05/09/2023	<u>86</u>	ORDER DENYING SECOND MOTION TO SUPPRESS re <u>70</u> , <u>81</u> as to Lyle Rikio Cummings - Signed by CHIEF JUDGE DERRICK K. WATSON on 5/9/2023. (eta) (Entered: 05/09/2023)
05/12/2023	<u>87</u>	<p>EP : Status Conference as to Lyle Rikio Cummings held on 5/12/2023. Mr. Mottl, counsel for Defendant, failed to appear for today's hearing. Defendant Lyle Rikio Cummings also failed to appear for today's hearing.</p> <p>Moreover, neither Mr. Mottl nor Defendant, contacted the Court to indicate that they were unable to appear or otherwise to request permission to participate in today's hearing by telephone.</p> <p>Court confirms with Government that the trial remains set for 6/7/2023 before District Judge Watson.</p> <p>Ms. Perlmutter updates the Court as to trial-related deadlines and communications between counsel and the Government. Ms. Perlmutter reports occasional difficulty in being able to contact Mr. Mottl.</p> <p>Court issues ORDER TO SHOW CAUSE directed to Mr. Mottl for his failure to appear at today's Status Conference and why sanctions should not be imposed.</p> <p>Hearing on the Order to Show Cause is set for 5/17/2023 at 9:30 a.m. before Magistrate Judge Trader in Courtroom 5. Mr. Mottl is required to appear in person. Defendant may appear by telephone, but only if a written waiver of physical appearance is received by the Court by no later than 5/16/2023 at 12:00 p.m.</p> <p>Status Conference - MJ as to Lyle Rikio Cummings held on 5/12/2023. Show Cause Hearing is set for 5/17/2023 09:30 AM in Courtroom 5 before MAGISTRATE JUDGE ROM TRADER.</p> <p>(FTR-CT 5 / 9:36-9:44 AM) (MAGISTRATE JUDGE ROM TRADER) (eta) (Entered: 05/12/2023)</p>
05/15/2023	<u>88</u>	REQUEST (Written Waiver of Physical Appearance and Request for Appearance by Telephone by Lyle Rikio Cummings as to Hearing on Order to Show Cause set for May 17, 2023 before Magistrate Judge Rom Trader) (Mottl, Joscph) Modified on 5/16/2023 (eta). (Entered: 05/15/2023)
05/15/2023	<u>89</u>	NOTICE UNITED STATES NOTICE PURSUANT TO FEDERAL RULES OF EVIDENCE 902(14) and 902(11) by USA as to Lyle Rikio Cummings (Attachments: # <u>1</u> Exhibit A) (Olson, Christine) (Entered: 05/15/2023)
05/15/2023	<u>90</u>	MOTION in Limine Regarding (1) Publication of Text Messages to the Jury and (2) Publication of Transcript to the Jury by USA as to Lyle Rikio Cummings. (Olson, Christine). Added MOTION in Limine Regarding (2) Publication of Transcript to the Jury on 5/16/2023 (eta). (Entered: 05/15/2023)
05/15/2023	<u>91</u>	Government's Proposed Jury Instructions by USA as to Lyle Rikio Cummings. (Olson, Christine) Modified on 5/16/2023 (eta). (Entered: 05/15/2023)
05/15/2023	<u>92</u>	MOTION in Limine to Admit FRE 1006 Summary Chart by USA as to Lyle Rikio Cummings. (Attachments: # <u>1</u> Exhibit A)(Perlmutter, Rebecca) Modified on 5/16/2023 (eta). (Entered: 05/15/2023)

05/16/2023		ADVISORY ENTRY. Submission of Proposed Orders - Please be advised that Document <u>84</u> Stipulation of Fact, filed USA requires the court's approval. If the filing party has not already done so, please email the document in Microsoft Word format to the applicable chambers' email address (watson_orders@hid.uscourts.gov). Please refer to Section 10.4 (Emailing of Proposed Orders and Stipulations to Chambers) of the CM/ECF Procedures Guide for additional instructions and a list of chambers' email addresses. (eta) (Entered: 05/16/2023)
05/16/2023	<u>93</u>	Written WAIVER of Physical Appearance and Request for Appearance by Telephone by Lyle Rikio Cummings as to Hearing on Order to Show Cause set for May 17, 2023 before Magistrate Judge Rom Trader - APPROVED AND SO ORDERED by MAGISTRATE JUDGE ROM TRADER on 5/16/2023. (eta) (Entered: 05/16/2023)
05/16/2023	<u>94</u>	<i>Defendant's</i> EXHIBIT LIST by Lyle Rikio Cummings. (Mottl, Joseph) <small>Modified on 5/17/2023 (eta).</small> (Entered: 05/16/2023)
05/16/2023	<u>95</u>	<i>Defendant's</i> Trial WITNESS LIST by Lyle Rikio Cummings. (Mottl, Joseph) <small>Modified on 5/17/2023 (eta).</small> (Entered: 05/16/2023)
05/17/2023	<u>96</u>	<i>Defense Counsel's</i> DECLARATION Regarding Order to Show Cause by Lyle Rikio Cummings (Mottl, Joseph) <small>Modified on 5/17/2023 (eta).</small> (Entered: 05/17/2023)
05/17/2023	<u>97</u>	STIPULATION OF FACT as to Lyle Rikio Cummings - Signed by CHIEF JUDGE DERRICK K. WATSON on 5/17/2023. (eta) (Entered: 05/17/2023)
05/17/2023	<u>98</u>	EO: As to Defendant Lyle Rikio Cummings, Pretrial Conference originally scheduled for 5/26/2023 is moved to <u>5/24/2023 at 9:00 a.m.</u> in Aha Kupono before CHIEF JUDGE DERRICK K. WATSON. NOTICE of HEARING on <u>90</u> Government's Motion in Limine, Regarding (1) Publication of Text Messages to the Jury; and (2) Publication of Transcript of the Jury; and <u>92</u> Government's Motion in Limine to Admit FRE 1006 Summary Chart is set for <u>5/24/2023 at 9:00 a.m.</u> in Aha Kupono before CHIEF JUDGE DERRICK K. WATSON. (CHIEF JUDGE DERRICK K. WATSON) (tyk) (Entered: 05/17/2023)
05/17/2023	<u>99</u>	EP :Show Cause Hearing as to Lyle Rikio Cummings held on 5/17/2023. <u>Waiver of Physical Presence and Consent to Proceed by Telephone:</u> Defendant not in custody and present via telephone. Defendant waives right to be physically present and consents to appear via telephone. Court conducts colloquy to confirm Defendant's waiver and consent. <u>Show Cause Hearing:</u> Discussion had regarding Mr. Mottl's failure to appear at the Status Conference set for 5/12/2023 before Magistrate Judge Trader, timely comply with court deadlines, and communicate with opposing counsel. Court accepts Mr. Mottl's explanation. Court reminds Mr. Mottl of his obligation to attend all scheduled hearings, comply with court deadlines, and communicate with opposing counsel. Court confirms 6/7/2023 trial date before District Judge Watson. Mr. Mottl represents he will be prepared to proceed to trial on 6/7/2023.

		<p>Court reminded Defendant that he will need to be physically present for trial and of his responsibility to be aware of all court hearings and deadlines.</p> <p>Mr. Mottl is DIRECTED to participate in weekly telephone conferences with the Government every Wednesday at noon, commencing on 5/24/2023.</p> <p>Parties encouraged to streamline facts, issues, exhibits and witnesses for trial.</p> <p>Court to update District Judge Watson.</p> <p>(FTR-CT 5 / 9:34-9:59 AM) (MAGISTRATE JUDGE ROM TRADER) (eta) (Entered: 05/17/2023)</p>
05/21/2023	<u>100</u>	NOTICE (<i>Government's Trial Presentation Statement</i>) by USA as to Lyle Rikio Cummings (Perlmutter, Rebecca) Modified on 5/22/2023 The main document is signed by co-counsel Christine Olson. The Certificate of Service is signed by the e-filer, Rebecca Perlmutter. (eta). (Entered: 05/21/2023)
05/22/2023	<u>101</u>	<i>Government's TRIAL BRIEF</i> by USA as to Lyle Rikio Cummings. (Olson, Christine) Modified on 5/23/2023 (eta). (Entered: 05/22/2023)
05/22/2023	<u>102</u>	<i>United States' Proposed Voir Dire Questions</i> by USA as to Lyle Rikio Cummings. (Olson, Christine) Modified on 5/23/2023 (eta). (Entered: 05/22/2023)
05/23/2023	<u>103</u>	<i>United States' Proposed Verdict Form</i> by USA as to Lyle Rikio Cummings. (Olson, Christine) Modified on 5/24/2023 (eta). (Entered: 05/23/2023)
05/23/2023	<u>104</u>	<i>Government's First Amended EXHIBIT LIST</i> by USA as to Lyle Rikio Cummings. (Olson, Christine) Modified on 5/24/2023 (eta). (Entered: 05/23/2023)
05/24/2023	<u>105</u>	*** Document refiled at ECF No. <u>109</u> *** MOTION in Limine <i>Motion in Limine No. 1: Re Exclusion from Introduction at Trial of Illegal Substances Allegedly Seized from Defendants Truck (i.e. Property Control Numbers 748028, 748031, 748039, 748046, and 748047)</i> by Lyle Rikio Cummings. (Mottl, Joseph) Modified on 5/25/2023 This document is not signed (eta). (Entered: 05/24/2023)
05/24/2023	<u>106</u>	Supplement re <u>92</u> MOTION in Limine <i>to Admit FRE 1006 Summary Chart</i> by USA as to Lyle Rikio Cummings. (Attachments: # <u>1</u> Exhibit Exhibit A)(Perlmutter, Rebecca) Modified on 5/25/2023 to terminate motion, add linkage to underlying motion (eta). (Entered: 05/24/2023)
05/24/2023	<u>107</u>	STIPULATION OF EVIDENCE NO. 1 as to Lyle Rikio Cummings - Signed by CHIEF JUDGE DERRICK K. WATSON on 5/24/2023. (eta) (Entered: 05/24/2023)
05/24/2023	<u>108</u>	STIPULATION OF EVIDENCE NO. 2 as to Lyle Rikio Cummings - Signed by CHIEF JUDGE DERRICK K. WATSON on 5/24/2023. (eta) (Entered: 05/24/2023)
05/24/2023	<u>109</u>	MOTION in Limine #1 <i>Re: Exclusion from Introduction at Trial of Illegal Substances Allegedly Seized from Defendant's Truck (i.e. Property Control Numbers 748028, 748031, 748039, 748046, and 748047); Exhibits A-D</i> by Lyle Rikio Cummings. (Mottl, Joseph) Modified on 5/25/2023 (eta). (Entered: 05/24/2023)
05/24/2023	<u>110</u>	<p>EP: Hearing on <u>90</u> Government's Motion in Limine, Regarding (1) Publication of Text Messages to the Jury; and (2) Publication of Transcript of the Jury; and <u>92</u> Government's Motion in Limine to Admit FRE 1006 Summary Chart; and Final Pretrial Conference.</p> <p>Defendant Lyle Rikio Cummings present by telephone, not in custody.</p> <p>[9:05 - 9:45] Discussion held.</p>

Court addressed the untimely filing of Defendant Lyle Rikio Cummings' Motion In Limine #1 [Dkt. No. 105]. Joseph R. Motl III sanctioned \$500.00. Check payable to "Clerk, United States District Court."

Court sets the following briefing schedule to Defendant's Motion in Limine # 1 which is styled as a Motion to Suppress:

Govt.'s opposition due: 5/31/2023.

Defendant's optional reply due: 6/5/2023.

Hearing set for 6/7/2023 at 1:30 p.m. in Aha Kupono.

Defendant is instructed to remedy the omission, whatever exhibits to be attached to 105 Motion in Limine #1, by no later than 5:00 p.m. today.

Defendant is instructed to notify the Govt. and the Court as soon as possible if he objects to having Sgt. Andrew Cabral, Jr. testify by VTC at the suppression hearing.

Court's Ruling on Govt.'s Motions

90 Government's Motion in Limine, Regarding (1) Publication of Text Messages to the Jury; and (2) Publication of Transcript of the Jury - **Granted**, for reasons as stated on the record.

92 Government's Motion in Limine to Admit FRE 1006 Summary Chart; and Final Pretrial Conference - **Granted**, for reasons as stated on the record. By stipulation between the parties, Govt.'s Exhibit 4 (Summary Chart of Text Message Conversation Between Cummings and "Kiana") is admitted into evidence for trial.

Final Pretrial Conference

As to the Stipulation of Fact, Dkt. No. 97 , parties to inform the Court when the appropriate time to read the Stipulation to the Jury.

The parties have stipulated the following exhibits into evidence at trial: 1 through 10, 13 through 16 and 18.

Exhibits 11 and 17 have been stipulated as to authenticity at trial.

Jury Instructions and Verdict Form

Defendant shall file written responses to the Govt.'s proposed jury instructions and verdict form by 5/31/2023.

Concise Statement of the Case

The Parties shall confer in advance of trial for the purpose of preparing an agreed upon Concise Statement of the Case that may be read to the jury during voir dire. The agreed upon Concise Statement of the Case shall be filed on or before 6/2/2023.

Voir Dire

The Court will consider the proposed voir dire questions proposed by the Parties.

Stipulations

		Court will allow the filing of stipulations pass the deadline. (Reporter-Gloria Bediamol) (CHIEF JUDGE DERRICK K. WATSON) (tyk) (Entered: 05/24/2023)
05/31/2023	<u>111</u>	Proposed Voir Dire-Defendant's Proposed Joint Statement of the Case by Lyle Rikio Cummings. (Mottl, Joseph) <small>Modified on 6/1/2023 (eta)</small> (Entered: 05/31/2023)
05/31/2023	<u>112</u>	EO: The Judges of the United States District Court have requested that real-time reporting services be provided to them during evidentiary hearings involving the taking of testimony from a live witness. In order to provide the Court with an accurate and more useful realtime record of proceedings, counsel is directed to submit the following information to the courtroom deputy by 6/5/2023: 1. Names of parties and attorneys to the action; 2. Witness list; and 3. Exhibit list. The information will be shared with the court reporter to enable them to program computers with steno outlines unique to your personal case. (CHIEF JUDGE DERRICK K. WATSON) (tyk) (Entered: 05/31/2023)
05/31/2023	<u>113</u>	RESPONSE in Opposition by USA as to Lyle Rikio Cummings re <u>109</u> MOTION in Limine #1 (Olson, Christine) (Entered: 05/31/2023)
06/01/2023	<u>114</u>	<i>United States' Second Amended EXHIBIT LIST</i> by USA as to Lyle Rikio Cummings. (Perlmutter, Rebecca) <small>Text modified on 6/2/2023 (eta)</small> (Entered: 06/01/2023)
06/02/2023	<u>115</u>	<i>Supplement Defendants Trial Presentation Statement</i> by Lyle Rikio Cummings (Mottl, Joseph) (Entered: 06/02/2023)
06/02/2023	<u>116</u>	MOTION in Limine #2 by Lyle Rikio Cummings. (Mottl, Joseph) (Entered: 06/02/2023)
06/02/2023	<u>117</u>	NOTICE <i>Proposed Statements of the Case</i> by USA as to Lyle Rikio Cummings (Perlmutter, Rebecca) (Entered: 06/02/2023)
06/03/2023	<u>118</u>	NOTICE OF HEARING ON Defendant Lyle Rikio Cummings' Motion in Limine #2 is set for 6/7/2023 at 01:30 PM in Aha Kupono before CHIEF JUDGE DERRICK K. WATSON. (tyk) (Entered: 06/03/2023)
06/05/2023	<u>119</u>	RESPONSE <i>United States' Supplement</i> to its <u>113</u> Opposition to <u>109</u> Defendant's MOTION in Limine #1 by USA as to Lyle Rikio Cummings (Attachments: # <u>1</u> Exhibit 9, # <u>2</u> Exhibit 10, # <u>3</u> Exhibit 11)(Olson, Christine) <small>Modified on 6/6/2023 (eta)</small> (Entered: 06/05/2023)
06/05/2023	<u>120</u>	NOTICE <i>Witness List for Evidentiary Hearing</i> by USA as to Lyle Rikio Cummings (Olson, Christine) <small>Modified on 6/6/2023 (eta)</small> (Entered: 06/05/2023)
06/05/2023	<u>121</u>	NOTICE <i>Exhibit List for Evidentiary Hearing</i> by USA as to Lyle Rikio Cummings (Olson, Christine) <small>Modified on 6/6/2023 (eta)</small> (Entered: 06/05/2023)
06/05/2023	<u>122</u>	<i>First Amended Government's WITNESS LIST for Trial</i> by USA as to Lyle Rikio

		Cummings. (Olson, Christine) Docket text modified on 6/6/2023 (eta). (Entered: 06/05/2023)
06/06/2023	123	<p>EO : as to Lyle Rikio Cummings; at the direction of Chief Judge Derrick K. Watson, a Telephone Conference with attorneys only is set for 6/6/2023 at 10:00 AM before CHIEF JUDGE DERRICK K. WATSON.</p> <p>(CHIEF JUDGE DERRICK K. WATSON)(afe) (Entered: 06/06/2023)</p>
06/06/2023	<u>124</u>	<p>EP : Telephonic Status Conference re Trial Schedule as to Lyle Rikio Cummings held with counsel only on 6/6/2023.</p> <p>Discussion held re the trial schedule. By consent of the parties, the following trial schedule has been adopted:</p> <p>Wednesday, 6/7/2023 - 9:00 a.m., Jury Selection</p> <ul style="list-style-type: none"> - 1:30 p.m., Evidentiary Hearing - Parties are instructed to be ready to proceed before 9:00 a.m. once the panel of potential jurors have been processed. <p>Thursday, 6/8/2023 - 2:00 p.m. to 4:30 p.m., Jury Trial</p> <p>Friday, 6/9/2023 - 2:00 p.m. to 4:30 p.m., Jury Trial</p> <p>Monday, 6/12/2023 - Holiday (No Court)</p> <p>Tuesday, 6/13/2023 - To be determined at a later day.</p> <p>(Reporter-Gloria Bediamol)</p> <p>(CHIEF JUDGE DERRICK K. WATSON)</p> <p>(eta) (Entered: 06/06/2023)</p>
06/07/2023	<u>125</u>	<p>EP : Jury Selection (Day 1) as to Lyle Rikio Cummings held on 6/7/2023.</p> <p>Defendant Lyle Rikio Cummings present, not in custody.</p> <p>HSI Special Agent Murray Acosta present.</p> <p>67 prospective jurors present.</p> <p>Court addressed the prospective jurors, gave a brief overview of jury selection, trial process and the rules and restrictions while serving on the jury.</p> <p>Voir dire conducted by Court and Counsel. Peremptory challenges made.</p> <p>14 Jurors chosen and sworn. All other prospective jurors thanked and excused.</p> <p>[1:35] 14 Jurors excused for the day.</p> <p>Further Jury Trial (Day 2) set for 6/8/2023 @ 2:00 p.m. in Aha Kupono before Chief Judge Derrick K. Watson.</p> <p>[1:50] Arguments heard on <u>116</u> Defendant Lyle Rikio Cummings' Motion in Limine #2.</p> <p>For reasons as stated on the record, <u>116</u> Defendant Lyle Rikio Cummings' Motion in Limine #2 is DENIED as moot. Both parties agree they must comply with the terms of the Proffer Agreement, and any objections may be made if appropriate during trial.</p> <p>[2:15] Evidentiary Hearing held on <u>109</u> Defendant Lyle Rikio Cummings' Motion in Limine #1.</p>

		<p><u>Govt.'s Witness</u> Andrew Cabral - CST. Direct Examination, Cross Examination, Redirect Examination.</p> <p><u>Defendant's Witness</u> Lyle Rikio Cummings - CST. Direct Examination.</p> <p>For reasons as stated on the record, <u>109</u> Defendant Lyle Rikio Cummings' Motion in Limine #1 is DENIED and DENIED on Reconsideration.</p> <p>Motion Hearing as to Lyle Rikio Cummings held on 6/7/2023 re <u>109</u> MOTION in Limine #1 filed by Lyle Rikio Cummings, <u>116</u> MOTION in Limine #2 filed by Lyle Rikio Cummings ; denying <u>109</u> Motion in Limine as to Lyle Rikio Cummings (1); denying <u>116</u> Motion in Limine as to Lyle Rikio Cummings (1); Motions terminated as to Lyle Rikio Cummings: <u>109</u> MOTION in Limine #1 filed by Lyle Rikio Cummings, <u>116</u> MOTION in Limine #2 filed by Lyle Rikio Cummings.; Evidentiary Hearing as to Lyle Rikio Cummings held on 6/7/2023. Jury Selection as to Lyle Rikio Cummings held on 6/7/2023. Jury Trial is set for 02:00 PM on 6/8/2023 in Aha Kupono before CHIEF JUDGE DERRICK K. WATSON.</p> <p>(Reporter-Gloria Bediamol) (CHIEF JUDGE DERRICK K. WATSON) (eta) Modified on 6/8/2023 (tyk). (Entered: 06/07/2023)</p>
06/07/2023	<u>126</u>	(<i>Evidentiary Hearing</i>) United States' WITNESS LIST for Evidentiary Hearing - by USA as to Lyle Rikio Cummings. (eta) (Entered: 06/08/2023)
06/07/2023	<u>127</u>	(<i>Evidentiary Hearing</i>) WITNESS / EXHIBIT LIST ("Statement for Realtime Court Reporting Services") - by Lyle Rikio Cummings. (eta) Modified on 6/8/2023 (eta). (Entered: 06/08/2023)
06/08/2023	<u>128</u>	<p>EP : Jury Trial (Day 2) as to Lyle Rikio Cummings held on 6/8/2023.</p> <p>Defendant Lyle Rikio Cummings present, not in custody. HSI Special Agent Murray Acosta present. 14 jurors present.</p> <p>Court gave the jury preliminary instructions.</p> <p>Opening statements by Plaintiff and Defendant.</p> <p><u>Govt.'s Witnesses</u> John Surina, Detective, Maui Police Department - CST. Direct Examination, Cross Examination.</p> <p>Exhibits admitted into evidence by stipulation on 5/24/2023 and published to the jurors (Dkt. No. 110): 1, 2, 3, 4.</p> <p>Further Jury Trial (Day 3) set for 6/9/2023 @ 2:00 p.m. in Aha Kupono before Chief Judge Derrick K. Watson.</p> <p>Jury Trial as to Lyle Rikio Cummings held on 6/8/2023. Jury Trial is CONTINUED to 02:00 PM on 6/9/2023 in Aha Kupono before CHIEF JUDGE DERRICK K. WATSON.</p> <p>(Reporter-Gloria Bediamol) (CHIEF JUDGE DERRICK K. WATSON) (eta) (Entered: 06/08/2023)</p>
06/09/2023	<u>129</u>	COURT PROPOSED JURY INSTRUCTIONS as to Lyle Rikio Cummings. (eta) (Entered: 06/09/2023)
06/09/2023	<u>130</u>	COURT PROPOSED VERDICT FORM as to Lyle Rikio Cummings. (eta) (Entered: 06/09/2023)

06/09/2023	<u>131</u>	<p>EP : Jury Trial (Day 3) as to Lyle Rikio Cummings held on 6/9/2023.</p> <p>Defendant Lyle Rikio Cummings present, not in custody. HSI Special Agent Murray Acosta present. 14 jurors present.</p> <p><u>Govt.'s Witnesses</u></p> <p>John Surina, Detective, Maui Police Department - Continuation with Cross Examination.</p> <p>Kahiapo Kauhaahaa, Officer, Maui Police Department - CST. Direct Examination, Cross Examination.</p> <p>Exhibit admitted into evidence by stipulation on 5/24/2023 and published to the jury: 5, 6.</p> <p>Stipulation read into the record as to Exhibit 19.</p> <p>Matthew Bigoss, Detective Maui Police Department and Task Force, Expert in the field of forensic phone extraction and analysis - CST. Direct Examination, Cross Examination.</p> <p>Exhibits admitted into evidence: 14, 17.</p> <p>Andrew Cabral, Former Officer Maui Police Department - CST. Direct Examination.</p> <p>Stipulations read into the record as to Exhibits 18 and 20.</p> <p>Schedule from Wednesday, 6/14/2023 and thereafter will be as follows: 8:30 a.m. to 1:30 p.m. in Aha Kupono before Chief Judge Derrick K. Watson.</p> <p>[4:35] Without the presence of the jury, parties are instructed to review the <u>120</u> Court's Proposed Jury Instructions and <u>130</u> Courts Proposed Verdict Form.</p> <p>Further Jury Trial (Day 4) set for 6/13/2023 @ 2:00 p.m. in Aha Kupono before Chief Judge Derrick K. Watson.</p> <p>Jury Trial as to Lyle Rikio Cummings held on 6/9/2023 as to Lyle Rikio Cummings. Jury Trial is CONTINUED to 02:00 PM on 6/13/2023 in Aha Kupono before CHIEF JUDGE DERRICK K. WATSON.</p> <p>(Reporter-Gloria Bediamol) (CHIEF JUDGE DERRICK K. WATSON) (eta) (Entered: 06/09/2023)</p>
06/13/2023	<u>132</u>	<p>EP : Jury Trial (Day 4) as to Lyle Rikio Cummings held on 6/13/2023.</p> <p>Defendant Lyle Rikio Cummings present, not in custody. HSI Special Agent Murray Acosta present. 14 jurors present.</p> <p>Court addresscs the delay and adviscs the parties that the trial schedule beginning on Wednesday, 6/14/2023 and thereafter will be as follows: 8:30 a.m. to 1:30 p.m. in Aha Kupono before Chief Judge Derrick K. Watson.</p> <p><u>Govt.'s Witnesses:</u></p> <p>Laura Dai, Special Agent U.S. HSI - CST, Direct Examination. (no cross) Gregg Katayama, Detective Maui Police Department - CST, Direct</p> <p>[4:50 pm] Jurors dismissed for the day.</p>

		<p>Discussion held outside the presence of the jury with the parties regarding jury instructions. Courts proposed jury instructions and verdict form at dkts. <u>129</u> and <u>130</u> will be discussed at 10:30 am. The parties to provide any further input by 6/13/2023 at 10pm regarding the Court's proposed instructions and jury verdict form at docket numbers <u>129</u> and <u>130</u> .</p> <p>Further Jury Trial (Day 5) set for 6/14/2023 @ 8:30 a.m. in Aha Kupono before Chief Judge Derrick K. Watson.</p> <p>Jury Trial as to Lyle Rikio Cummings held on 6/13/2023. Jury Trial is set for 08:30 AM on 6/14/2023 in Aha Kupono before CHIEF JUDGE DERRICK K. WATSON.</p> <p>(Reporter-Gloria Bediamol) (CHIEF JUDGE DERRICK K. WATSON) (eta) (Entered: 06/13/2023)</p>
06/13/2023	<u>133</u>	Proposed Jury Instructions (<i>Defendant's Request for (1) a Jury Instructions as to Count I of the Indictment, (2) a Jury Instruction as to the Defense of Entrapment, and a Jury Instruction for Lesser Included Offense to the Charge in Count II of the Indictment</i>) by Lyle Rikio Cummings. (Mottl, Joseph) Docket text modified on 6/14/2023 (eta). (Entered: 06/13/2023)
06/14/2023	<u>134</u>	Proposed Jury Instructions Memorandum in Support of 133 Defendant's Requested Jury Instructions by Lyle Rikio Cummings. (Mottl, Joseph) Docket text modified on 6/14/2023 (eta). (Entered: 06/14/2023)
06/14/2023	<u>135</u>	COURT JURY INSTRUCTIONS as to Lyle Rikio Cummings. (eta) (Entered: 06/14/2023)
06/14/2023	<u>136</u>	COURT VERDICT FORM as to Lyle Rikio Cummings. (eta) (Entered: 06/14/2023)
06/14/2023	<u>137</u>	<p>EP : Jury Trial (Day 5) as to Lyle Rikio Cummings held on 6/14/2023.</p> <p>Defendant Lyle Rikio Cummings present, not in custody. HSI Special Agent Murray Acosta present. 14 jurors present.</p> <p>Govt.'s Witnesses: Gregg Katayama, Detective Maui Police Department - Cross examination. Brandi Kaoni, Criminalist II, ABC-DA, Maui Police Department - CST, Direct examination, Cross examination, Re-Direct examination. Murray Acosta, Special Agent, U.S. HSI - CST, Direct examination. Ryan Faulkner, Resident Agent in Charge, HSI - CST, Direct examination, Cross examination, Re-direct examination.</p> <p>[11:58 PM] Government rests.</p> <p>Defense Witnesses: Defendant, Lyle Rikio Cummings - CST, Direct examination, Cross examination, Redirect examination. Vianna Cummings - CST, Direct examination, Cross examination. Evelyn Cummings - CST, Direct examination, Cross examination. Exhibits admitted: 12, 12A</p> <p>[1:22 PM] Defense rests.</p> <p>[1:30 pm] Jurors dismissed for the day.</p>

		<p>Court will finalize and file jury instructions on the docket. Court will resume for jury instructions, closing arguments and jury deliberations.</p> <p>Further Jury Trial (Day 6) set for 6/15/2023 @ 8:30 a.m. in Aha Kupono before Chief Judge Derrick K. Watson.</p> <p>Jury Trial as to Lyle Rikio Cummings held on 6/14/2023. Jury Trial is set for 08:30 AM on 6/15/2023 in Aha Kupono before CHIEF JUDGE DERRICK K. WATSON.</p> <p>(Reporter-Gloria Bediamol) (CHIEF JUDGE DERRICK K. WATSON) (eta) (Entered: 06/14/2023)</p>
06/14/2023	<u>138</u>	<i>THIRD AMENDED EXHIBIT LIST</i> by USA as to Lyle Rikio Cummings. (Olson, Christine) Docket text modified on 6/15/2023 (eta). (Entered: 06/14/2023)
06/14/2023	<u>139</u>	FINAL JURY INSTRUCTIONS as to Lyle Rikio Cummings. (eta) (Entered: 06/14/2023)
06/14/2023	<u>140</u>	FINAL VERDICT FORM as to Lyle Rikio Cummings. (eta) (Entered: 06/14/2023)
06/15/2023	<u>141</u>	REVISED FINAL VERDICT FORM as to Lyle Rikio Cummings. (eta) (Entered: 06/15/2023)
06/15/2023	<u>142</u>	<p>EP : Jury Trial (Day 6 - verdict) as to Lyle Rikio Cummings held on 6/15/2023.</p> <p>Defendant Lyle Rikio Cummings present, not in custody. HSI Special Agent Murray Acosta present.</p> <p>Status conference held with Counsel and Defendant regarding final jury instructions and final verdict form. Jury not present.</p> <p>[8:40 am] 14 jurors present. Jury instructions read to jury and filed. Proposed Verdict Form read to jury.</p> <p>Closing Arguments presented.</p> <p>Bailiff Stewart Ferriman sworn.</p> <p>[11:10 am] Alternate jurors excused. 12 Jury Panel retired to begin deliberations. Court authorizes jury's lunch to be paid during deliberations.</p> <p>[1:00 pm] 12 Jurors present. Verdict received, reviewed and ready by the Court. Jurors polled. Jurors Discharged. Defendant found guilty as to Counts ONE (1) and TWO (2).</p> <p>Court hears from the parties regarding the custody status of the defendant. For reasons stated on the record, the defendant Lyle Rikio Cummings is remanded to the custody of the U.S. Marshals pending sentencing.</p> <p>Sentencing is set for 9/26/2023 at 9:00 am in aha Kupono before Chief Judge Derrick K. Watson.</p> <p>Status Conference - DJ as to Lyle Rikio Cummings held on 6/15/2023. Jury Trial as to Lyle Rikio Cummings held on 6/15/2023. Sentencing is set for 9/26/2023 09:00 AM in Aha Kupono before CHIEF JUDGE DERRICK K. WATSON.</p> <p>(Reporter-Gloria Bediamol) (CHIEF JUDGE DERRICK K. WATSON) (eta) (Entered: 06/15/2023)</p>

06/15/2023	<u>143</u>	REVISED FINAL VERDICT FORM (<i>redacted</i>) as to Lyle Rikio Cummings (1) Guilty on Count 1,2. (eta) (Entered: 06/15/2023)
06/15/2023	<u>144</u>	REVISED FINAL VERDICT FORM (<i>unredacted</i>) as to Lyle Rikio Cummings (1) Guilty on Count 1,2 (eta) (Entered: 06/15/2023)
06/15/2023	<u>145</u>	(<i>Trial</i>) First Amended Government's WITNESS LIST for Trial - by USA as to Lyle Rikio Cummings. (eta) (Entered: 06/15/2023)
06/15/2023	<u>146</u>	(<i>Trial</i>) United States' Second Amended EXHIBIT LIST - by USA as to Lyle Rikio Cummings. (eta) (Entered: 06/15/2023)
06/15/2023	<u>147</u>	(<i>Trial</i>) Defendant's Trial WITNESS LIST - by Lyle Rikio Cummings. (eta) (Entered: 06/15/2023)
07/10/2023	<u>148</u>	MOTION for Forfeiture of Property : <i>UNITED STATES MOTION FOR ENTRY OF A PRELIMINARY ORDER OF FORFEITURE; EXHIBITS 4, 11; PROPOSED PRELIMINARY ORDER OF FORFEITURE; COS</i> by USA as to Lyle Rikio Cummings. (Attachments: # <u>1</u> Exhibit 4, # <u>2</u> Exhibit 11, # <u>3</u> Proposed POF)(Olson, Christine) (Entered: 07/10/2023)
07/10/2023	<u>149</u>	PRELIMINARY ORDER OF FORFEITURE (SPECIFIC PROPERTY) re <u>148</u> as to Lyle Rikio Cummings - Signed by CHIEF JUDGE DERRICK K. WATSON on 7/10/2023. (eta) (Entered: 07/10/2023)
08/10/2023	<u>150</u>	PRESENTENCE INVESTIGATION REPORT (DRAFT)(01)**Document Restricted** as to Lyle Rikio Cummings; Sentencing Statements due by 08/24/2023. (Attachments: # <u>1</u> Notice to Attorneys - Draft)(Rubio Salado, Melissa) (Entered: 08/10/2023)
08/23/2023	<u>151</u>	NOTICE of Filing Declaration of Internet Publication; Declaration of Internet Publication; Exhibit "A" by USA as to Lyle Rikio Cummings (Olson, Christine) (Entered: 08/23/2023)
08/24/2023	<u>152</u>	SENTENCING STATEMENT by Plaintiff USA as to Lyle Rikio Cummings <i>UNITED STATES STATEMENT OF NO OBJECTION TO THE PSR; COS</i> (Olson, Christine) (Entered: 08/24/2023)
09/11/2023	<u>154</u>	EO: As to Lyle Rikio Cummings, at the request of Christine Olson and no objections by Mr. Mottl, Sentencing set for 9/26/2023 is continued to 10/10/2023 at 09:00 AM in Aha Kupono before CHIEF JUDGE DERRICK K. WATSON. (CHIEF JUDGE DERRICK K. WATSON) (tyk) (Entered: 09/11/2023)
09/28/2023	<u>155</u>	SENTENCING STATEMENT by Defendant Lyle Rikio Cummings (Mottl, Joseph) (Entered: 09/28/2023)
10/04/2023	<u>156</u>	PRESENTENCE INVESTIGATION REPORT final (01)**Document Restricted** as to Lyle Rikio Cummings (Rubio Salado, Melissa) (Entered: 10/04/2023)
10/04/2023	<u>157</u>	STANDARD Conditions Attachment to <u>156</u> Presentence Investigation Report (mle) (Entered: 10/04/2023)
10/06/2023	<u>158</u>	SENTENCING MEMORANDUM ; Exhibit "A" by Lyle Rikio Cummings (Mottl, Joseph) Modified on 10/11/2023 (eta). (Entered: 10/06/2023)
10/10/2023	<u>159</u>	Supplement First Supplement to Sentencing Memorandum re <u>158</u> Sentencing Memorandum by Lyle Rikio Cummings (Mottl, Joseph) (Entered: 10/10/2023)

10/10/2023	<u>160</u>	FINAL ORDER OF FORFEITURE as to Lyle Rikio Cummings - Signed by CHIEF JUDGE DERRICK K. WATSON on 10/10/2023. (eta) (Entered: 10/10/2023)
10/10/2023	<u>161</u>	<p>EP : Sentencing to Counts 1 and 2 of the Indictment held on 10/10/2023 for Lyle Rikio Cummings (1). Defendant Lyle Rikio Cummings present, in custody.</p> <p>On June 15, 2023, pursuant to a jury verdict, Defendant Lyle Rikio Cummings was convicted as to Counts 1 and 2 of the Indictment.</p> <p>Parties have reviewed the revised Presentence Report. Court adopts the factual findings of the revised Presentence Report.</p> <p>Allocution by the Defendant Lyle Rikio Cummings.</p> <p>The Final Order of Forfeiture filed on 10/10/2023 shall be made a part of the Final Judgment.</p> <p>There are no objections to the sentencing guidelines. Court findings made as to the applicable sentencing guidelines. Court notes the aggravating and mitigating factors related to Defendant Lyle Rikio Cummings's Sentencing.</p> <p>Recommendations by Counsel as to proposed sentence heard. Courts proposed sentence stated. No legal objections to the proposed sentence. Court imposes sentence.</p> <p><u>Count(s) 1, 2 SENTENCE:</u></p> <p>Imprisonment: 126 Months as to Count 1 and Count 2, terms to run concurrently.</p> <p>Supervised Release: 7 Years as to Count 1 and Count 2, terms to run concurrently.</p> <p>Fine: None. Restitution: None.</p> <p>Special Assessment: \$200.00 (\$100.00 per count).</p> <p>Mr. Mottl (Defendant's attorney) confirmed that he discussed the Standard Conditions of Supervised Release with his client. The parties stipulated on the record to waive the Court's reading of the Standard Conditions of Supervised Release. (The mandatory and standard conditions of supervision are detailed in the attached minutes).</p> <p>Defendant Lyle Rikio Cummings advised of his right to appeal within 14 days of entry of judgment.</p> <p><u>Judicial Recommendations:</u></p> <ol style="list-style-type: none"> 1. Defendant to be placed at Federal Detention Center, Honolulu (1st choice to be near family); Terminal Island FCI (2nd choice) or Lompoc FCI (3rd choice); 2. Defendant to receive a Mental Health Assessment and Treatment, if needed; and 3. Defendant to receive Vocational and Educational programming. <p>Mittimus forthwith. Defendant Lyle Rikio Cummings is remanded to the custody of the USMS.</p> <p>(Reporter-Ann Matsumoto) (CHIEF JUDGE DERRICK K. WATSON) (eta) (Entered: 10/10/2023)</p>
10/12/2023	<u>162</u>	JUDGMENT as to Lyle Rikio Cummings (1), Count(s) 1, 2 SENTENCE: Imprisonment: 126 Months as to Count 1 and Count 2, terms to run concurrently. Supervised Release: 7 Years as to Count 1 and Count 2, terms to run concurrently. Fine: None. Restitution:

		None. Special Assessment: \$200.00 (\$100.00 per count). Mittimus forthwith. Signed by CHIEF JUDGE DERRICK K. WATSON on 10/12/2023. (eta) (Entered: 10/12/2023)
10/12/2023	<u>163</u>	STATEMENT OF REASONS as to Lyle Rikio Cummings - Signed by CHIEF JUDGE DERRICK K. WATSON on 10/12/2023.**Document Restricted** * (eta) (Entered: 10/12/2023)
10/21/2023	<u>164</u>	NOTICE OF APPEAL by Lyle Rikio Cummings re <u>162</u> Judgment, (Main Document 164 replaced on 10/23/2023) (<i>e-filed by Joseph R. Mottl, Esq.</i>) (eta). (Additional attachment(s) added on 10/23/2023: # <u>1</u> CJA 23 - Financial Affidavit (SEALED), # <u>2</u> Form 6. Representation Statement) (eta). USCA No. 23-3016 Modified on 10/23/2023 to separate out the Financial Affidavit and Representation Statement from the Notice of Appeal. The Financial Affidavit has been sealed (eta). Modified on 10/25/2023 (eta). (Entered: 10/21/2023)
10/24/2023	<u>165</u>	USCA Case Number as to Lyle Rikio Cummings 23-3016 for <u>164</u> Notice of Appeal - Final Judgment, filed by Lyle Rikio Cummings. (eta) (Entered: 10/25/2023)
10/24/2023	<u>166</u>	USCA Time Schedule Order as to Lyle Rikio Cummings, USCA No. 23-3016 (eta) (Entered: 10/25/2023)
10/25/2023	<u>167</u>	Attorney Appeal Packet re <u>164</u> Notice of Appeal - Final Judgment filed by Lyle Rikio Cummings, USCA No. 23-3016. (Attachments: # <u>1</u> Notice of Appeal & Representation Statement, # <u>2</u> Instructions for Criminal Appeals, # <u>3</u> Additional Instructions for Transcript Designation and Ordering Form, # <u>4</u> Letter Regarding Court Reporters, # <u>5</u> Transcript Designation and Ordering Form, # <u>6</u> Docket Sheet) <i>Note: The appellant submitted a Financial Affidavit and Representation Statement, together with the Notice of Appeal filed at ECF No. <u>164</u>. Because the Financial Affidavit is a confidential document, the Clerk's Office separated out and reattached the documents at ECF No. <u>164</u> to restrict the affidavit. Additionally, Form 6. Representation Statement, also includes a request for appointment of counsel on appeal.</i> (eta) (Entered: 10/25/2023)
01/03/2024	<u>168</u>	<p>ORDER of USCA as to Lyle Rikio Cummings re <u>164</u> Notice of Appeal - Final Judgment, USCA No. 23-3016:</p> <p>The court grants counsel Mottl leave to withdraw and appoints new counsel conditionally, subject to appellant filing a completed financial affidavit (CJA Form 23). The Clerk will terminate counsel Mottl from the docket. Within 35 days after counsel is appointed, new counsel is directed to assist appellant in completing the CJA Form 23 and file the completed affidavit with this court. If appellant submits a CJA Form 23 demonstrating indigency, appellant's in forma pauperis status and counsel's appointment will continue without further order of the court.</p> <p>The Clerk will electronically serve this order on the appointing authority for the District of Hawaii, who will locate appointed counsel. The appointing authority is requested to send notification of the name, address, and telephone number of appointed counsel to the Clerk of this court at counselappointments@ca9.uscourts.gov within 14 days of locating counsel.</p> <p>(Attachments: # <u>1</u> blank CJA 23 Financial Affidavit)</p> <p>(eta) (Entered: 01/03/2024)</p>
01/04/2024	<u>169</u>	<p>ORDER APPOINTING COUNSEL re <u>168</u> as to Lyle Rikio Cummings (re USCA No.23-3016) - Signed by MAGISTRATE JUDGE WES REBER PORTER on 1/4/2024.</p> <p>Added attorney George C. Boisseau for Lyle Rikio Cummings. Attorney Joseph R. Mottl, III terminated in case as to Lyle Rikio Cummings.</p> <p>(eta) (Entered: 01/08/2024)</p>

01/04/2024	<u>170</u>	CJA 20 as to Lyle Rikio Cummings: George C. Boisseau, Esq. appointed for Lyle Rikio Cummings re USCA No. 23-3016 (substitution for retained attorney Joseph R. Mottl, III, Esq.). Signed by MAGISTRATE JUDGE WES REBER PORTER on 1/4/2024. (eta) Modified on 1/8/2024 (eta). (Entered: 01/08/2024)
01/08/2024		COURT'S CERTIFICATE of Service - a copy of <u>169</u> ORDER APPOINTING COUNSEL has been served electronically to the Ninth Circuit Court of Appeals at counselappointments@ca9.uscourts.gov on January 8, 2024. A copy of this order (together with a copy of ECF No. 168), shall be served by First Class Mail to Lyle Rikio Cummings, 12444-122 at Victorville Medium II FCI, Federal Correctional Institution, P. O. Box 3850, Adelanto, CA 92301 on January 9, 2024. Registered Participants of CM/ECF received the document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). (eta) (Entered: 01/08/2024)
02/01/2024	<u>171</u>	DESIGNATION OF RECORD ON APPEAL <i>Transcript Designation and Ordering Form</i> by Lyle Rikio Cummings re <u>164</u> Notice of Appeal - Final Judgment (e-filed by George C. Boisseau, Esq.) Modified on 2/2/2024 (eta). (Entered: 02/01/2024)
02/02/2024	<u>172</u>	ORDER TEMPORARILY UNSEALING HEARING FOR LIMITED PURPOSE OF PREPARING COPY OF TRANSCRIPT as to Lyle Rikio Cummings re <u>47</u> - Signed by MAGISTRATE JUDGE KENNETH J. MANSFIELD on 2/2/2024. (eta) (Entered: 02/02/2024)
02/02/2024	<u>173</u>	ORDER TEMPORARILY UNSEALING HEARING FOR LIMITED PURPOSE OF PREPARING COPY OF TRANSCRIPT as to Lyle Rikio Cummings re <u>68</u> - Signed by MAGISTRATE JUDGE WES REBER PORTER on 2/2/2024. (eta) (Entered: 02/02/2024)
02/14/2024	<u>174</u>	TRANSCRIPT of Proceedings SENTENCING as to Lyle Rikio Cummings - held on October 10, 2023, before Judge Derrick K. Watson. Court Reporter/Transcriber - ANN MATSUMOTO, Telephone number -8085412061.Email Address - am@hid.uscourts.gov, PP. 25, 90-Day Transcript Restriction: PACER access to filed transcripts is restricted for 90 days from the file date to permit redaction of personal identifiers. Citations to restricted transcripts in filed documents must be limited to those portions of the proceedings that are relevant and in need of judicial review. Attaching restricted transcripts, in their entirety, to filed documents should be limited to situations with specific need. Transcript may be viewed at the court public terminal or ordered through the Court Reporter before the deadline for Release of Transcript. Redaction Request due 3/6/2024. Redacted Transcript Deadline set for 3/18/2024. Release of Transcript Restriction set for 5/14/2024. (Matsumoto, Ann) (Entered: 02/14/2024)
02/21/2024	<u>175</u>	TRANSCRIPT of Proceedings Mt. Supp. as to Lyle Rikio Cummings - held on April 21, 2023, before Judge Derrick K. Watson. Court Reporter/Transcriber - Gloria T. Bediamol, Telephone number -808-541-2060.Email Address - gloria_bediamol@hid.uscourts.gov, PP. 25, 90-Day Transcript Restriction: PACER access to filed transcripts is restricted for 90 days from the file date to permit redaction of personal identifiers. Citations to restricted transcripts in filed documents must be limited to those portions of the proceedings that are relevant and in need of judicial review. Attaching restricted transcripts, in their entirety, to filed documents should be limited to situations with specific need. Transcript may be viewed at the court public terminal or ordered through the Court Reporter before the deadline for Release of Transcript. Redaction Request due 3/13/2024. Redacted Transcript Deadline set for 3/25/2024. Release of Transcript Restriction set for 5/21/2024. (gloria_bediamol@hid.uscourts.gov) (Entered: 02/21/2024)
02/21/2024	<u>176</u>	TRANSCRIPT of Proceedings MIL pretrial conf. as to Lyle Rikio Cummings - held on May 24, 2023, before Judge Derrick K. Watson. Court Reporter/Transcriber - Gloria T. Bediamol, Telephone number -808-541-2060.Email Address -

		<p>gloria_bediamol@hid.uscourts.gov, PP. 44, 90-Day Transcript Restriction: PACER access to filed transcripts is restricted for 90 days from the file date to permit redaction of personal identifiers. Citations to restricted transcripts in filed documents must be limited to those portions of the proceedings that are relevant and in need of judicial review. Attaching restricted transcripts, in their entirety, to filed documents should be limited to situations with specific need. Transcript may be viewed at the court public terminal or ordered through the Court Reporter before the deadline for Release of Transcript. Redaction Request due 3/13/2024. Redacted Transcript Deadline set for 3/25/2024. Release of Transcript Restriction set for 5/21/2024. (gloria_bediamol@hid.uscourts.gov) (Entered: 02/21/2024)</p>
02/21/2024	<u>177</u>	<p>TRANSCRIPT of Proceedings Dfs. MIL, Mt. to Supp as to Lyle Rikio Cummings - held on June 7, 2023, before Judge Derrick K. Watson. Court Reporter/Transcriber - Gloria T. Bediamol, Telephone number -808-541-2060. Email Address - gloria_bediamol@hid.uscourts.gov, PP. 63, 90-Day Transcript Restriction: PACER access to filed transcripts is restricted for 90 days from the file date to permit redaction of personal identifiers. Citations to restricted transcripts in filed documents must be limited to those portions of the proceedings that are relevant and in need of judicial review. Attaching restricted transcripts, in their entirety, to filed documents should be limited to situations with specific need. Transcript may be viewed at the court public terminal or ordered through the Court Reporter before the deadline for Release of Transcript. Redaction Request due 3/13/2024. Redacted Transcript Deadline set for 3/25/2024. Release of Transcript Restriction set for 5/21/2024. (gloria_bediamol@hid.uscourts.gov) (Entered: 02/21/2024)</p>
02/21/2024	<u>178</u>	<p>TRANSCRIPT of Proceedings as to Lyle Rikio Cummings - held on June 7, 2023, before Judge Derrick K. Watson. PP. 134, (gloria_bediamol@hid.uscourts.gov) (Entered: 02/21/2024)</p>
02/21/2024	<u>179</u>	<p>TRANSCRIPT of Proceedings JT DAY 2 as to Lyle Rikio Cummings - held on June 8, 2023, before Judge Derrick K. Watson. Court Reporter/Transcriber - Gloria T. Bediamol, Telephone number -808-541-2060. Email Address - gloria_bediamol@hid.uscourts.gov, PP. 90, 90-Day Transcript Restriction: PACER access to filed transcripts is restricted for 90 days from the file date to permit redaction of personal identifiers. Citations to restricted transcripts in filed documents must be limited to those portions of the proceedings that are relevant and in need of judicial review. Attaching restricted transcripts, in their entirety, to filed documents should be limited to situations with specific need. Transcript may be viewed at the court public terminal or ordered through the Court Reporter before the deadline for Release of Transcript. Redaction Request due 3/13/2024. Redacted Transcript Deadline set for 3/25/2024. Release of Transcript Restriction set for 5/21/2024. (gloria_bediamol@hid.uscourts.gov) (Entered: 02/21/2024)</p>
02/21/2024	<u>180</u>	<p>TRANSCRIPT of Proceedings JT DAY 3 as to Lyle Rikio Cummings - held on June 9, 2023, before Judge Derrick K. Watson. Court Reporter/Transcriber - Gloria T. Bediamol, Telephone number -808-541-2060. Email Address - gloria_bediamol@hid.uscourts.gov, PP. 95, 90-Day Transcript Restriction: PACER access to filed transcripts is restricted for 90 days from the file date to permit redaction of personal identifiers. Citations to restricted transcripts in filed documents must be limited to those portions of the proceedings that are relevant and in need of judicial review. Attaching restricted transcripts, in their entirety, to filed documents should be limited to situations with specific need. Transcript may be viewed at the court public terminal or ordered through the Court Reporter before the deadline for Release of Transcript. Redaction Request due 3/13/2024. Redacted Transcript Deadline set for 3/25/2024. Release of Transcript Restriction set for 5/21/2024. (gloria_bediamol@hid.uscourts.gov) (Entered: 02/21/2024)</p>

02/21/2024	<u>181</u>	TRANSCRIPT of Proceedings JT DAY 4 as to Lyle Rikio Cummings - held on June 13, 2023, before Judge Derrick K. Watson. Court Reporter/Transcriber - Gloria T. Bediamol, Telephone number -808-541-2060.Email Address - gloria_bediamol@hid.uscourts.gov, PP. 51, <u>90-Day Transcript Restriction:</u> PACER access to filed transcripts is restricted for 90 days from the file date to permit redaction of personal identifiers. Citations to restricted transcripts in filed documents must be limited to those portions of the proceedings that are relevant and in need of judicial review. Attaching restricted transcripts, in their entirety, to filed documents should be limited to situations with specific need. Transcript may be viewed at the court public terminal or ordered through the Court Reporter before the deadline for Release of Transcript. Redaction Request due 3/13/2024. Redacted Transcript Deadline set for 3/25/2024. Release of Transcript Restriction set for 5/21/2024. (gloria_bediamol@hid.uscourts.gov) (Entered: 02/21/2024)
02/21/2024	<u>182</u>	TRANSCRIPT of Proceedings JT DAY 5 as to Lyle Rikio Cummings - held on June 14, 2023, before Judge Derrick K. Watson. Court Reporter/Transcriber - Gloria T. Bediamol, Telephone number -808-541-2060.Email Address - gloria_bediamol@hid.uscourts.gov, PP. 171, <u>90-Day Transcript Restriction:</u> PACER access to filed transcripts is restricted for 90 days from the file date to permit redaction of personal identifiers. Citations to restricted transcripts in filed documents must be limited to those portions of the proceedings that are relevant and in need of judicial review. Attaching restricted transcripts, in their entirety, to filed documents should be limited to situations with specific need. Transcript may be viewed at the court public terminal or ordered through the Court Reporter before the deadline for Release of Transcript. Redaction Request due 3/13/2024. Redacted Transcript Deadline set for 3/25/2024. Release of Transcript Restriction set for 5/21/2024. (gloria_bediamol@hid.uscourts.gov) (Entered: 02/21/2024)
02/21/2024	<u>183</u>	TRANSCRIPT of Proceedings JT DAY 6 as to Lyle Rikio Cummings - held on June 15, 2023, before Judge Derrick K. Watson. Court Reporter/Transcriber - Gloria T. Bediamol, Telephone number -808-541-2060.Email Address - gloria_bediamol@hid.uscourts.gov, PP. 87, <u>90-Day Transcript Restriction:</u> PACER access to filed transcripts is restricted for 90 days from the file date to permit redaction of personal identifiers. Citations to restricted transcripts in filed documents must be limited to those portions of the proceedings that are relevant and in need of judicial review. Attaching restricted transcripts, in their entirety, to filed documents should be limited to situations with specific need. Transcript may be viewed at the court public terminal or ordered through the Court Reporter before the deadline for Release of Transcript. Redaction Request due 3/13/2024. Redacted Transcript Deadline set for 3/25/2024. Release of Transcript Restriction set for 5/21/2024. (gloria_bediamol@hid.uscourts.gov) (Entered: 02/21/2024)
03/14/2024	<u>184</u>	TRANSCRIPT of Proceedings as to Lyle Rikio Cummings - held on 07/05/2022, before Judge Rom Trader. Court Reporter/Transcriber - Jessica Cahill, Telephone number - (808)298-8633.Email Address - maukele@hawaii.rr.com, PP. 14, <u>90-Day Transcript Restriction:</u> PACER access to filed transcripts is restricted for 90 days from the file date to permit redaction of personal identifiers. Citations to restricted transcripts in filed documents must be limited to those portions of the proceedings that are relevant and in need of judicial review. Attaching restricted transcripts, in their entirety, to filed documents should be limited to situations with specific need. Transcript may be viewed at the court public terminal or ordered through the Court Reporter before the deadline for Release of Transcript. Redaction Request due 4/4/2024. Redacted Transcript Deadline set for 4/15/2024. Release of Transcript Restriction set for 6/12/2024. (Cahill, Jessscia) (Entered: 03/14/2024)
03/14/2024	<u>185</u>	TRANSCRIPT of Proceedings as to Lyle Rikio Cummings - held on 11/08/2022, before Judge Kenneth J. Mansfield. Court Reporter/Transcriber - Jessica Cahill, Telephone number -(808)298-8633.Email Address - maukele@hawaii.rr.com, PP. 10, <u>90-Day</u>

		<p><u>Transcript Restriction:</u> PACER access to filed transcripts is restricted for 90 days from the file date to permit redaction of personal identifiers. Citations to restricted transcripts in filed documents must be limited to those portions of the proceedings that are relevant and in need of judicial review. Attaching restricted transcripts, in their entirety, to filed documents should be limited to situations with specific need. Transcript may be viewed at the court public terminal or ordered through the Court Reporter before the deadline for Release of Transcript. Redaction Request due 4/4/2024. Redacted Transcript Deadline set for 4/15/2024. Release of Transcript Restriction set for 6/12/2024. (Cahill, Jesscia) (Entered: 03/14/2024)</p>
03/14/2024	<u>186</u>	<p>TRANSCRIPT of Proceedings as to Lyle Rikio Cummings - held on 11/10/2022, before Judge Kenneth J. Mansfield. Court Reporter/Transcriber - Jessica Cahill, Telephone number -(808)298-8633.Email Address - maukele@hawaii.rr.com, PP. 25, <u>90-Day Transcript Restriction:</u> PACER access to filed transcripts is restricted for 90 days from the file date to permit redaction of personal identifiers. Citations to restricted transcripts in filed documents must be limited to those portions of the proceedings that are relevant and in need of judicial review. Attaching restricted transcripts, in their entirety, to filed documents should be limited to situations with specific need. Transcript may be viewed at the court public terminal or ordered through the Court Reporter before the deadline for Release of Transcript. Redaction Request due 4/4/2024. Redacted Transcript Deadline set for 4/15/2024. Release of Transcript Restriction set for 6/12/2024. (Cahill, Jesscia) (Entered: 03/14/2024)</p>
03/14/2024	<u>187</u>	<p>TRANSCRIPT of Proceedings as to Lyle Rikio Cummings - held on 2/15/2023, before Judge Rom Trader. Court Reporter/Transcriber - Jessica Cahill, Telephone number -(808)298-8633.Email Address - maukele@hawaii.rr.com, PP. 23, <u>90-Day Transcript Restriction:</u> PACER access to filed transcripts is restricted for 90 days from the file date to permit redaction of personal identifiers. Citations to restricted transcripts in filed documents must be limited to those portions of the proceedings that are relevant and in need of judicial review. Attaching restricted transcripts, in their entirety, to filed documents should be limited to situations with specific need. Transcript may be viewed at the court public terminal or ordered through the Court Reporter before the deadline for Release of Transcript. Redaction Request due 4/4/2024. Redacted Transcript Deadline set for 4/15/2024. Release of Transcript Restriction set for 6/12/2024. (Cahill, Jesscia) (Entered: 03/14/2024)</p>
03/14/2024	<u>188</u>	<p>TRANSCRIPT of Proceedings as to Lyle Rikio Cummings - held on 3/20/2023, before Judge Wes Reber Porter. Court Reporter/Transcriber - Jessica Cahill, Telephone number -(808)298-8633.Email Address - maukele@hawaii.rr.com, PP. 22, <u>90-Day Transcript Restriction:</u> PACER access to filed transcripts is restricted for 90 days from the file date to permit redaction of personal identifiers. Citations to restricted transcripts in filed documents must be limited to those portions of the proceedings that are relevant and in need of judicial review. Attaching restricted transcripts, in their entirety, to filed documents should be limited to situations with specific need. Transcript may be viewed at the court public terminal or ordered through the Court Reporter before the deadline for Release of Transcript. Redaction Request due 4/4/2024. Redacted Transcript Deadline set for 4/15/2024. Release of Transcript Restriction set for 6/12/2024. (Cahill, Jesscia) (Entered: 03/14/2024)</p>
03/14/2024	<u>189</u>	<p>TRANSCRIPT of Proceedings as to Lyle Rikio Cummings - held on 4/14/2023, before Judge Kenneth J. Mansfield. Court Reporter/Transcriber - Jessica Cahill, Telephone number -(808)298-8633.Email Address - maukele@hawaii.rr.com, PP. 7, <u>90-Day Transcript Restriction:</u> PACER access to filed transcripts is restricted for 90 days from the file date to permit redaction of personal identifiers. Citations to restricted transcripts in filed documents must be limited to those portions of the proceedings that are relevant and in need of judicial review. Attaching restricted transcripts, in their entirety, to filed</p>

		documents should be limited to situations with specific need. Transcript may be viewed at the court public terminal or ordered through the Court Reporter before the deadline for Release of Transcript. Redaction Request due 4/4/2024. Redacted Transcript Deadline set for 4/15/2024. Release of Transcript Restriction set for 6/12/2024. (Cahill, Jesscia) (Entered: 03/14/2024)
03/14/2024	<u>190</u>	TRANSCRIPT of Proceedings as to Lyle Rikio Cummings - held on 5/12/2023, before Judge Rom Trader. Court Reporter/Transcriber - Jessica Cahill, Telephone number - (808)298-8633. Email Address - maukele@hawaii.rr.com, PP. 7, <u>90-Day Transcript</u> Restriction: PACER access to filed transcripts is restricted for 90 days from the file date to permit redaction of personal identifiers. Citations to restricted transcripts in filed documents must be limited to those portions of the proceedings that are relevant and in need of judicial review. Attaching restricted transcripts, in their entirety, to filed documents should be limited to situations with specific need. Transcript may be viewed at the court public terminal or ordered through the Court Reporter before the deadline for Release of Transcript. Redaction Request due 4/4/2024. Redacted Transcript Deadline set for 4/15/2024. Release of Transcript Restriction set for 6/12/2024. (Cahill, Jesscia) (Entered: 03/14/2024)
03/14/2024	<u>191</u>	TRANSCRIPT of Proceedings as to Lyle Rikio Cummings - held on 5/17/2023, before Judge Rom Trader. Court Reporter/Transcriber - Jessica Cahill, Telephone number - (808)298-8633. Email Address - maukele@hawaii.rr.com, PP. 18, <u>90-Day Transcript</u> Restriction: PACER access to filed transcripts is restricted for 90 days from the file date to permit redaction of personal identifiers. Citations to restricted transcripts in filed documents must be limited to those portions of the proceedings that are relevant and in need of judicial review. Attaching restricted transcripts, in their entirety, to filed documents should be limited to situations with specific need. Transcript may be viewed at the court public terminal or ordered through the Court Reporter before the deadline for Release of Transcript. Redaction Request due 4/4/2024. Redacted Transcript Deadline set for 4/15/2024. Release of Transcript Restriction set for 6/12/2024. (Cahill, Jesscia) (Entered: 03/14/2024)
03/14/2024	<u>192</u>	TRANSCRIPT of Proceedings as to Lyle Rikio Cummings - held on 11/10/2022, before Judge Kenneth J. Mansfield. PP. 11, (tl) (Entered: 03/18/2024)
03/14/2024	<u>193</u>	TRANSCRIPT of Proceedings as to Lyle Rikio Cummings - held on 3/20/2023, before Judge Wes Reber Porter. PP. 17, (tl) (Entered: 03/18/2024)
07/01/2024	<u>194</u>	NOTICE of Withdrawal on Behalf of The United States- Attorney Christine Olson no longer associated with this case. (apg) (Entered: 07/01/2024)

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